TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 123.

THE NORTH AMERICAN TRANSPORTATION AND TRADING COMPANY, AS CLAIMANT OF THE STEAMSHIP "ROANOKE," APPELLANT,

vs.

T. J. KING AND A. WINGE, COPARTNERS AS KING & WINGE, AND W. B. FRASER.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF WASHINGTON.

(18,210.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 357.

THE NORTH AMERICAN TRANSPORTATION AND TRADING COMPANY, AS CLAIMANT OF THE STEAMSHIP "ROANOKE," APPELLANT,

vs.

T. J. KING AND A. WINGE, COPARTNERS AS KING & WINGE, AND W. B. FRASER.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF WASHINGTON.

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a In the District Court of the United States for the District of Washington, Northern Division.

T. J. KING and A. WINGE, as Copartners as King & Winge, Libelants,
vs.
STEAMSHIP "ROANOKE," NORTH AMERICAN TRANSPORTATION & TRADING Co., Claimant; W. B. Fraser, Intervenor. } No. 2018.

Transcript of Record on Appeal.

Appeal from the district court of the United States for the district of Washington, northern division, to the United States Supreme Court.

1 In the District Court of the United States for the District of Washington, Northern Division.

T. J. KING and A. WINGE, Copartners as King & Winge, Libelants,
vs.
THE STEAMSHIP "ROANOKE," HER ENGINES, Boilers, Tackle, Apparel, and Furniture. } In Admiralty. Libel. No. 2018.

To the Honorable Cornelius H. Hanford, judge of said court:

The libel of T. J. King and A. Winge, copartners as King & Winge, residents of said district, against The Steamship "Roanoke," her engines, boilers, boats, tackle, apparel and furniture, whereof J. B. Weaver now is, or late was, master, in a cause of contract for labor and repairs, civil and maritime, alleges as follows:

I.

That during all the times hereinafter mentioned the said libellants were and now are copartners doing business as King & Winge.

II.

That between the 5th day of December 1900 and the 22nd day of December, 1900, these libelants in the port of Seattle, in the district of Washington, furnished materials for the repair of the said steamship "Roanoke," and which were actually used in the repair of said steamship in said district as follows, to wit: Spars and lumber which were of the reasonable value of ninety ($90) dollars.

III.

That between said dates these libellants performed work and labor in said port in said district in the repair of said steamship which was of the reasonable value of two hundred thirty-three ($233.00) dollars.

2 IV.

That the said charges for the said materials furnished and labor performed are such as are usual and customary in said port for materials and labor of the kind so furnished and performed.

V.

That all of said materials were so furnished and all of said work and labor was so performed at the request of George Broom and George Gibson who were contractors of the owners of the said steamship and, who at the time of the furnishing of said materials and the performance of said labor had full charge of the alteration and repair of the said steamship.

VI.

That the said materials were so furnished and the said labor was so performed by these libelants upon the credit of the said steamship.

VII.

That the said steamship "Roanoke" is an American vessel.

VIII.

That the said steamship, her boats, engines, boilers, tackle, apparel and furniture are now within the said district of Washington and the jurisdiction of this court.

IX.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and this honorable court.

Wherefore the said libelants pray that process in due form of law according to the course of this honorable court in causes of admiralty and maritime jurisdiction may issue against the said steamship, her engines, boilers, boats, tackle, apparel and furniture and
3 against all persons lawfully intervening or having any interest therein, and that they and each of them may be cited in general and special to answer the premises, and all due proceedings being had that the said vessel, her engines, boilers, boats, tackle, apparel and furniture may be condemned and sold to pay the claim aforesaid, together with costs; and that the said libelants may have such other and further relief in the premises as in law and justice they may be entitled to receive.

PRESTON & EMBREE,
Proctors for Libelants.

STATE OF WASHINGTON, } ss:
County of King, }

T. J. King, being first duly sworn, on oath says: That he is one of the libelants named in the foregoing libel; that he has heard the libel read; knows the contents thereof and believes the same to be true.

T. J. KING.

Subscribed and sworn to before me this 23rd day of May, 1901.

C. S. PRESTON,
Notary Public for the State of Washington, Residing at Seattle.

Indorsed: Libel. Filed in the U. S. district court dist. of Washington May 23, 1901. R. M. Hopkins, clerk, H. M. Walthew, deputy.

4 In the District Court of the United States for the District of Washington, Northern Division.

T. J. KING and A. WINGE, Copartners as King & Winge, Libellants, *vs.* THE STEAMSHIP "ROANOKE," HER Engines, Boilers, Tackle, Apparel, and Furniture.	In Admiralty. No. 2018. Stipulation for Costs.

Know all men by these presents that we, T. J. King and A. Winge, copartners doing business in the name of King & Winge, the libellants above named, as principals, and J. S. Miller as sureties, are held and firmly bound unto the said steamship "Roanoke" and to any and all persons that may intervene or claim an interest in the said steamship, in the sum of two hundred and fifty and no/100 ($250.00) dollars, for the payment of which well and truly to be paid, we jointly and severally bind ourselves, our and each of our heirs, executors and administrators firmly by these presents.

Sealed with our seals and dated this 23rd day of May, 1901.

Whereas the said principals have filed in the above-entitled court their libel against the said steamship "Roanoke" praying for the seizure and condemnation of the said steamship,

Now, therefore, if the said principals shall pay all costs awarded against them by this court, or in case of appeal, by the appellate court, in said proceedings, then this obligation shall be null and void, otherwise to remain in full force and effect. And the said sureties hereby consent that in case of default or contumacy on the part of the said principals, execution to the amount named
5 in said bond may issue against his goods, chattels and lands.

Witness our hands this 23rd day of May, 1901.

T. J. KING.
KING & WINGE.
J. S. MILLER.

STATE OF WASHINGTON, } ss:
County of King, }

J. S. Miller, being first duly sworn, on oath says that he is the surety named in and who signed the foregoing bond; that he is a *bona fide* resident of the district of Washington and is worth the sum of two hundred fifty ($250.00) dollars over and above his debts and liabilities, exclusive of property exempt from execution.

J. S. MILLER.

Subscribed and sworn to before me this 23rd day of May, 1901.

C. S. PRESTON,
Notary Public for the State of Washington,
Residing at Seattle.

Indorsed: Stipulation of libelants for costs. Filed in the U. S. district court dist. of Washington. May 23 1901 R. M. Hopkins, clerk, H. M. Walthew, deputy.

6 In the District Court of the United States for the District of Washington, Northern Division.

T. J. KING and A. WINGE, Copartners as King & Winge, Libelants, *vs.* THE STEAMSHIP "ROANOKE," HER ENGINES, BOILERS, TACKLE, APPAREL, and FURNITURE.	No. 2018. In Admiralty. Intervening Libel.

To the Honorable Cornelius H. Hanford, judge of said court:

The intervening libel of W. B. Fraser, a resident of said district, doing business in the name of the Acme Iron Works against the Steamship "Roanoke," her engines, boilers, boats, tackle, apparel and furniture whereof J. B. Weaver now is or late was master, in a cause of labor and materials furnished, civil and maritime, alleges as follows:

I.

That between the 9th day of December, 1900, and the 25th day of December, 1900, this intervening libelant W. B. Fraser, in the port of Seattle in the district of Washington, furnished certain materials for the repair of said steamship and performed certain work and labor in making said repairs, which materials were actually used in the repair of said steamship, as follows, to wit:

Cutting gooseneck out of old boom on board ship and labor of smith and helper	$3.50
Two (2) 1½-inch shackles and pins and one (1) 2-inch shackle and pin	9.00
Four (4) new bands with bolts and links, 325 lbs. at 15c	48.75
7 ft. 6 inch- of ⅞ tested chain	5.75
1 ft. 6 inch- steel thimble and link	3.50
One (1) new half band for masts and boom, one gooseneck and two (2) swivel pins, 365 # at 15c	54.75
One (1) new end on old gooseneck and old iron, with work and labor	25.00
Total	150.25

7 II.

That all of said materials were so furnished and said labor so performed in the district of Washington at the request of George Broom

and George Gibson who were the contractors in charge of the repair of said vessel for the owners thereof. And that this intervening libelant in furnishing said materials and performing said labor relied upon the credit of said steamship.

III.

That said steamship is an American vessel.

IV.

That said steamship, her engines, boilers, boats, tackle, apparel and furniture is now within the district of Washington and the jurisdiction of this court.

V.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and this honorable court.

Wherefore the said intervening libelant prays that process in due form of law, according to the course of this honorable court in causes of admiralty and maritime jurisdiction, may issue against the said steamship, her engines, boilers, boats, tackle, apparel and furniture and against all persons lawfully intervening or having any interest therein and that they and each of them may be cited in general and special to answer the premises and all due proceedings being had *and* that the said vessel, her engines, boilers, boats, tackle, apparel and furniture, may be condemned and sold to pay the claim of this intervening libelant aforesaid, together with costs. And that the said intervening libelant may have such other and further relief
8 in the premises as in law and justice he may be entitled to receive.

PRESTON & EMBREE,
Proctors for Libelant Intervening.

STATE AND DISTRICT OF WASHINGTON, } ss:
County of King, }

W. B. Fraser being first duly sworn, on his oath says: That he is the intervening libelant named in the foregoing libel; that he has heard the intervening libel read, knows the contents thereof and believes the same to be true.

W. B. FRASER.

Subscribed and sworn to before me this 23rd day of May 1901.

C. S. PRESTON,
Notary Public for the State of Washington,
Residing at Seattle.

Indorsed: Intervening libel of W. B. Fraser. Filed in the U. S. district court dist. of Washington. May 23, 1901. R. M. Hopkins, clerk, H. M. Walthew, deputy.

9 In the District Court of the United States for the District of Washington, Northern Division.

T. J. KING and A. WINGE, Copartners as King & Winge, Libelants,
vs.
THE STEAMSHIP "ROANOKE," HER Engines, Boilers, Tackle, Apparel, and Furniture.

In Admiralty. No. 2018. Intervenor's Stipulation for Costs.

Know all men by these presents that I, W. B. Fraser, the intervening libelant herein, as principal, and David Zerwekh, as surety, are held and firmly bound unto the said steamship "Roanoke" and to any and all persons that may intervene or claim an interest in the said steamship, in the sum of two hundred fifty ($250.00) dollars, for the payment of which sum well and truly to be made, we jointly and severally bind ourselves our and each of our heirs, executors and administrators firmly by these presents.

Sealed with our seals and dated this 23rd day of May, 1901.

Whereas the said principal has filed in the above-entitled court his intervening libel against the said steamship Roanoke praying for the seizure and condemnation of the said steamship,

Now, therefore, if the said principal shall pay all costs awarded against him by this court, or in case of appeal by the appellate court in said proceedings, then this obligation shall be null and void, otherwise to remain in full force and effect, and said surety hereby consents that in case of default or contumacy on the part of the said principal, execution to the amount named in this bond may issue against his goods, chattels and lands.

Witness our hands this 23rd day of May, 1901.

W. B. FRASER.
DAVID ZERWEKH.

10 STATE AND DISTRICT OF WASHINGTON, *County of King.* } ss:

David Zerwekh, being first duly sworn, on his oath says: That he is the surety named in and who signed the foregoing bond; that he is a *bona fide* resident of the State and district of Washington, and is worth the sum of two hundred fifty ($250.00) dollars over and above all his debts and liabilities, exclusive of property exempt from execution.

DAVID ZERWEKH.

Subscribed and sworn to before me this 23rd day of May, 1901.

C. S. PRESTON,
Notary Public for the State of Washington, Residing at Seattle.

Indorsed: Intervenor's stipulation for costs. Filed in the U. S. district court dist. of Washington May 23 1901 R. M. Hopkins, clerk, H. M. Walthew, deputy.

11 In the United States District Court for the District of Washington, Northern Division.

T. J. KING and A. WINGE, Libellants,
vs.
S. S. ROANOKE, HER FURNITURE, ETC.; W. B. Fraser, Intervening Libelant. } In Admiralty. No. 2018.

To the Honorable Cornelius H. Hanford, judge of said court:

North American Transportation and Trading Company, owners of the said S. S. Roanoke, her tackle, apparel and furniture, intervening for its interest in the said vessel, her tackle, etc., appear before this honorable court and claim the said vessel, her tackle, etc., and state that it is the true and *bona fide* owner thereof, and that no other person is the owner thereof; wherefore it prays to be admitted to defend accordingly, and that the said court will be pleased to decree a restitution of the same to it, and otherwise right and justice to administer in the premises.

NORTH AMERICAN TRANSPORTATION & TRADING CO.,
By R. B. SNOWDON, *Secretary.*

Sworn to May 23, 1901, before me,
EDWARD S. BYRNES,
Notary Public. [NOTARIAL SEAL.]

BAUSMAN & KELLEHER,
Proctor for Claimant.

Indorsed: Claim of North American Transportation & Trading Co. Filed in the U. S. district court dist. of Washington May 23 1901 R. M. Hopkins, clerk, H. M. Walthew, deputy.

12 In the United States District Court for the District of Washington, Northern Division. In Admiralty. No. 2018.

Whereas a libel was filed in this court on the 23 day of May A. D. 1901, by T. J. King and A. Winge, libelants, and W. B. Fraser, intervening libelant, against S. S. Roanoke, for the reasons and causes in said libel mentioned, and whereas a claim has been filed in the said cause by North American Transportation and Trading Co. and the said North American Transportation and Trading Company and the American Bonding and Trust Company of Baltimore City, *his* surety, the parties hereto, hereby consenting and agreeing that in case of default or contumacy on the part of the said claimant or its surety execution for the sum of two hundred and fifty dollars may issue against their goods, chattels and lands;

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulator undersigned, and each of them is hereby bound in the sum of two hundred and fifty dollars, conditioned that the claimant above named shall pay all costs and

expenses which shall be awarded against it by the final decree of this court or upon an appeal, by the appellate court.

NORTH AMERICAN TRANSPORTATION & TRADING CO.,
By R. B. SNOWDON, *Secretary.*
THE AMERICAN BONDING AND TRUST COMPANY OF BALTIMORE CITY,
[SEAL.] By FREDERICK A. WING, *Vice-Pres't.*
Attest: FRANK M. GUION, *Ass't Sec'y.*

Taken and acknowledged this 23 day of May 1901 before me.
[NOTARIAL SEAL.] EDWARD S. BYRNES,
Notary Public in and for the State of Washington, Residing at Seattle, Wash.

(Revenue stamps 2½c. affixed and cancelled.)

Indorsed: Claimant's stipulation for costs and expenses. Filed in the U. S. district court dist. of Washington May 23 1901 R. M. Hopkins, clerk, H. M. Walthew, deputy.

13 District Court of the United States for the District of Washington.

Know all men by these presents: That we North American Transportation and Trading Company as principal, and the American Bonding and Trust Company of Baltimore City as sureties, are held and firmly bound unto C. W. Ide, Esquire, marshal of the United States, for the district of Washington, in the sum of one thousand dollars, to be paid to the said marshal, for the payment of which, well and truly to be made, we each bind ourselves, and each of our heirs, executors, administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 23rd day of May in the year of our Lord one thousand nine hundred and one.

Whereas a libel and intervening libel were filed in the district court of the United States for the northern division, district of Washington, on the 23rd day of May in the year of our Lord one thousand nine hundred and one by T. J. King and A. Winge, libelants, and W. B. Fraser, intervening libellant, against the S. S. Roanoke, her furniture, etc., for the sum of three hundred and twenty-three dollars and one hundred fifty $\frac{25}{100}$ dollars, respectively, on which process of attachment has issued, and the said S. S. Roanoke is in custody of the said marshal under the said attachment, and, whereas, North American Transportation and Tradin- Company has applied for a discharge of said S. S. Roanoke from the custody of the said marshal, and has filed a claim claiming the said S. S. Roanoke and has filed a stipulation for the claimant's costs pursuant to the rules and practice of the said court:

Now, therefore, the condition of this obligation is such, that if the above-bounden North American Transportation and Trading Company shall abide by and answer the decree of this court, in

such cause, then this obligation shall be void, otherwise the
14 same shall be and remain in full force and virtue.

NORTH AMERICAN TRANSPORTATION & TRADING CO.,
By R. B. SNOWDON, *Secretary.*
[SEAL.] THE AMERICAN BONDING AND TRUST COMPANY OF BALTIMORE CITY,
By FREDERICK A. WING, *Vice-Pres't.*

Attest:

FRANK M. GUION, *Ass't Sec'y.*

Signed, acknowledged and delivered before me this 23 day of May 1901.

EDWARD S. BYRNES,
Notary Public in and for the State of Washington, Residing at Seattle, Wash. [NOTARIAL SEAL.]

(Revenue stamps 2½c. affixed and cancelled)

I approve of the sufficiency of the sureties to the within bond. Dated at Seattle, this 23rd day of May 1901.

C. H. HANFORD, *Judge.*

Indorsed: Bond to U. S. marshal under section 941 of the Revised Statutes of the United States. Filed in the U. S. district court dist. of Washington. May 23 1901 R. M. Hopkins, clerk H. M. Walthew, deputy.

15 DISTRICT OF WASHINGTON:

[Seal U. S. Dist. Ct.]

The President of the United States of America to the marshal of the United States for the district of Washington, Greeting:

Whereas, a libel hath been filed in the United States district court for the district of Washington, on the 23rd day of May in the year of our Lord one thousand nine hundred & one by T. J. King and A. Winge, copartners as King & Winge, against Steamship Roanoke, her engines, boilers, tackle, apparel, and furniture, for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said steamship or vessel, her tackle, etc., may be cited in general and special to answer the premises, and all proceedings being had that the said steamship or vessel, her tackle, etc., may for the causes in the said libel mentioned be condemned and sold to pay the demands of the libellant,

You are therefore hereby commanded to attach the said steamship or vessel, her tackle, etc., and to retain the same in your custody until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel, that they be and appear before the said court, to be held in and for the northern divis-

ion of the district of Washington, on the 6th day of June, A. D. 1901, at ten o'clock in the forenoon of the same day, if that
16 day shall be a day of jurisdiction—otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises, do you then and there make return thereof, together with this writ.

Witness the Hon. C. H. Hanford, judge of the said court, at the city of Seattle, in the northern division of the district of Washington, this 23rd day of May in the year of our Lord one thousand nine hundred & one and of our Independence the one hundred and 25th.

R. M. HOPKINS, *Clerk*,
By A. N. MOORE,
Deputy Clerk.

PRESTON & EMBREE,
Proctors for Libellant.

OFFICE OF U. S. MARSHAL, } ss:
District of Washington, }

In obedience to the within monition, I attached the steamship "Roanoke," therein described, on the 23rd day of May, 1901, and have given due notice to all persons claiming the same that this court will, on the 6th day of June, 1901 (if that day should be a day of jurisdiction, if not, on the next day of jurisdiction thereafter), proceed to the trial and condemnation thereof, should no claim be interposed for the same. And that on the 23rd day of May 1901, I released the said vessel upon receiving a notice of bonding signed by the clerk of the U. S. district court.

Date May 23rd, 1901.

C. W. IDE,
U. S. Marshal,
By H. W. TYLER,
Deputy Marshal.

Marshal's Fees and Expenses.

For serving attachment and monition	2.00
Miles traveled, 2 at 6 cents per mile	.12
Keeper's fees, 1 day at $2.50 per day	2.50
Releasing vessel on bonding	.50
Total	5.12

Indorsed: Monition and attachment. Filed in the U. S. district court dist. of Washington May 25 1901 R. M. Hopkins, clerk, A. N. Moore, deputy.

17 DISTRICT OF WASHINGTON:

[Seal U. S. Dist. Ct.]

The President of the United States of America to the marshal of the United States for the district of Washington, Greeting:

Whereas, an intervening libel hath been filed in the United States district court for the district of Washington, on the 23rd day of May in the year of our Lord one thousand nine hundred & one by intervenor W. B. Fraser, in the case of T. J. King and A. Winge, copartners as King & Winge, against Steamship Roanoke, her engines, boilers, tackle, apparel and furniture, for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said steamship or vessel, her tackle, etc., may be cited in general and special to answer the premises, and all proceedings being had that the said steamship or vessel, her tackle, etc., may for the causes in the said libel mentioned be condemned and sold to pay the demands of the libellant.

You are therefore hereby commanded to attach the said steamship or vessel, her tackle, etc., and to retain the same in your custody until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel, that they be and appear before the said court, to be held in and for the northern division of the district of Washington, on the 6th day of June, A. D. 1901, at ten o'clock in the forenoon of the same day, if that
18 day shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises, do you then and there make return thereof, together with this writ.

Witness the Hon. C. H. Hanford, judge of the said court, at the city of Seattle, in the northern division of the district of Washington, this 23rd day of May, in the year of our Lord one thousand nine hundred & one and of our Independence the one hundred and 25th.

R. M. HOPKINS, *Clerk*,
By H. M. WALTHEW,
Deputy Clerk.

PRESTON & EMBREE,
Proctors for Libellant.

OFFICE OF U. S. MARSHAL, } ss:
District of Washington, }

In obedience to the within monition, I attached the steamship Roanoke therein described, on the 23rd day of May 1901 and have given due notice to all persons claiming the same that this court will, on the 6th day of June 1901 (if that day should be a day of

jurisdiction, if not, on the next day of jurisdiction thereafter), proceed to the trial and condemnation thereof, should no claim be interposed for the same. And that on the 23rd day of May 1901 I released the said vessel upon receiving a notice of bonding, signed by the clerk of the U. S. district court.

Date May 23rd, 1901.

C. W. IDE,
U. S. Marshal,
By H. W. TYLER,
Deputy Marshal.

Marshal's Fees and Expenses.

For serving monition and attachment	2.00
Total	2.00

Indorsed: Monition and attachment. Filed in the U. S. district court dist. of Washington May 25 1901 R. M. Hopkins, clerk, A. N. Moore, deputy.

19 In the District Court of the United States for the District of Washington, Northern Division.

T. J. KING and A. WINGE, Copartners as King & Winge, Libelants, *vs.* THE STEAMSHIP "ROANOKE," HER ENGINES, Boilers, Tackle, Apparel, and Furniture.	Answer to Libel of King & Winge.

To the Honorable C. H. Hanford, judge of the above-entitled court:

The answer of the claimant and owner, North American Transportation & Trading Company, to the libel of King & Winge, alleges as follows:

I.

It admits that libelants are partners as alleged, that they furnished material and performed labor for the "Roanoke" as alleged in paragraphs II and III, that these materials and labor were of the value alleged, that they were furnished and performed at the request of the contractors named, then in charge of the alteration and repair, as contractors with this owner. It also admits that the labor and material were furnished on the credit of the ship, by the libelants, to this extent that libelants believed they had a lien on the ship for their labor and material by virtue of the law, but that the credit of the ship was in any other respect pledged or contemplated, this claimant denies.

And further answering this owner and claimant says:

I.

That claimant is and at all times herein mentioned was a corporation organized and existing under the laws of the State of Illinois.

Its head office at all times herein mentioned is and was in the city of Chicago in that State, and there reside and resided its
20 president and general manager. It maintains, and at all times herein mentioned, maintained agencies at Seattle and at various points on the Yukon river in Alaska, and in Canada, and its credit was high.

II.

At all the times herein mentioned the "Roanoke" was an ocean-going steamship, registered at Chicago in the State of Illinois, under the navigation laws of the United States, and bearing the name of Chicago on her stern. Until 1898 she was employed on the Atlantic coast, was in that year purchased by this claimant and since then has been engaged in ocean traffic, during the summer, between Seattle and the mouth of the Yukon, and during the winter between San Francisco and southern ports.

III.

At no time did this claimant order of libelants or either of them any of the labor or material set forth in the libel, but these labor and materials were furnished by them on the order of the contractors. Those contractors this claimant settled with, before the filing of this libel, by payment in full in the sum of seven hundred and sixty-four and $\frac{99}{100}$ dollars for all the material and labor set forth in the libel. This payment was made without any knowledge on claimant's part that any of these materials or labor were unpaid for by the contractor or at all.

IV.

Libelants claim a lien under the statutes of the State of Washington, known as sections 5953 and 5954 of Bellinger's Code and Statutes of the State. The lien attempted to be conferred by those statutes is, in this instance, void, because in violation of the 8th section of the first article of the Constitution of the United States giving to Congress the power to regulate commerce among
21 the several States, and constitutes an illegal burden upon interstate commerce, and is in violation also of the 14th article of the Constitution of the United States in that it deprives this claimant of *his* property without due process of law and without the equal protection of the laws, and is in violation of the second section of the third article of the Constitution of the United States conferring upon the courts of the United States admiralty and maritime jurisdiction.

V.

That all and singular the premises are true.

Wherefore this claimant prays that this honorable court would be pleased to pronounce against the libel aforesaid and to condemn the

libelants in costs, and otherwise law and justice to administer in the premises.

BAUSMAN & KELLEHER,
Proctors for Claimant.

UNITED STATES OF AMERICA,
Dist. & State of Washington, County of King, } ss:

R. B. Snowdon, being first duly sworn, on oath says that he is secretary of the claimant North American Transportation & Trading Co. named in the foregoing answer, that he has read the same, knows the contents thereof, and that the foregoing answer is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

R. B. SNOWDON.

Subscribed and sworn to before me this 31st day of May, 1901.
[NOTARIAL SEAL.] EDWARD S. BYRNES,
Notary Public in and for the State of Washington, Residing at Seattle, Wash.

22 Due service of within answer this 1 day of June 1901 duly admitted.

PRESTON & EMBREE,
Attorneys for Libelants & Intervenor.

Indorsed: Answer to libel. Filed in the U. S. district court dist. of Washington Jun- 3 1901 R. M. Hopkins, clerk, H. M. Walthew, deputy.

23 In the District Court of the United States for the District of Washington, Northern Division.

T. J. KING and A. WINGE, Copartners as King & Winge, Libelants, *vs.* THE STEAMSHIP "ROANOKE," HER ENGINES, Boilers, Tackle, Apparel, and Furniture.	Answer to Intervening Libel of Fraser.

To the Honorable C. H. Hanford, judge of the above-entitled court:

The answer of the claimant and owner, North American Transportation & Trading Company to the intervening libel of W. B. Fraser alleges as follows:

It admits that intervenor furnished material and performed labor on the Roanoke as alleged in paragraph I, that these materials and labor were of the value alleged, and that they were furnished and performed at the request of the contractors named then in charge of the alteration and repair as contractors with this owner. It also admits that the labor and material were furnished on the credit of the ship by intervenor to this extent that intervenor believed he

had a lien on the ship for his labor and material by virtue of law, but that the credit of the ship was in any other respect pledged or contemplated this claimant denies.

And further answering this claimant says:

I.

The claimant is and at all times herein mentioned was a corporation organized and existing under the laws of the State of Illinois. Its head office at all times herein mentioned is and was in the city of Chicago in that State, and there reside and resided its president and general manager. It maintains, and at all times herein mentioned, maintained agencies at Seattle and at various points
24 on the Yukon river in Alaska, and in Canada, and its credit was high.

II.

At all the times herein mentioned the Roanoke was an ocean-going steamship, registered at Chicago, in the State of Illinois, under the navigation laws of the United States, and bearing the name of Chicago on her stern. Until 1898 she was employed on the Atlantic coast, was in that year purchased by this claimant, and since then has been engaged in the ocean traffic during the summer between Seattle and the mouth of the Yukon, and during the winter between San Francisco and southern ports.

III.

At no time did this claimant order of intervenor, *or either of them*, any of the labor or material set forth in the libel, but these labor and material- were furnished by him on the order of the contractors. Those contractors this claimant settled with, before the filing of this libel, by payment in full in the sum of seven hundred and sixty-four and $\frac{99}{100}$ dollars for all the material and labor set forth in the libel. This payment was made without any knowledge on claimant's part that any of these materials or labor were unpaid for by the contractor, or at all.

IV.

Intervenor claims a lien under the statutes of the State of Washington, known as sections 5953 and 5954 of Bellinger's Code and Statutes of the State. The lien attempted to be conferred by those statutes is in this instance void, because in violation of the 8th section of the first article of the Constitution of the United States, giving to Congress the power to regulate commerce among the several States, and constitutes an illegal burden upon inter-
25 state commerce, and is in violation also of the 14th article of the Constitution of the United States, in that it deprives this claimant of *his* property without due process of law, and without the equal protection of the laws, and is in violation of the second section of the third article of the Constitution of the United States conferring upon the courts of the United States admiralty and maritime jurisdiction.

V.

That all and singular the premises are true.

Wherefore this claimant prays that this honorable court would be pleased to pronounce against the libel aforesaid and to condemn the intervenor in costs, and otherwise law and justice to administer in the premises.

BAUSMAN & KELLEHER,
Proctors for Claimant.

UNITED STATES OF AMERICA,
Dist. & State of Washington, County of King, } ss:

R. B. Snowdon, being first duly sworn, on oath says that he is secretary of the claimant North American Transportation & Trading Co. named in the foregoing answer; that he has read the same, knows the contents thereof, and that the foregoing answer is true of his own knowledge, except as to the matters therein stated to be on information and belief and as to those matters he believes it to be true.

R. B. SNOWDON.

Subscribed and sworn to before me this 31st day of May 1901.

EDWARD S. BYRNES,
[NOTARIAL SEAL.] *Notary Public in and for the State of Washington. Residing at Seattle, Wash.*

26 Due service of within answer this 1st day of June 1901 duly admitted.

PRESTON & EMBREE,
Attorneys for Libelants & Intervenor.

Indorsed: Answer to libel of intervenor Fraser. Filed in the U. S. district court dist. of Washington Jun- 3 1901 R. M. Hopkins, clerk, H. M. Walthew, deputy.

27 In the District Court of the United States for the District of Washington, Northern Division.

T. J. KING ET AL., Libelants,
vs.
THE STEAMSHIP "ROANOKE," ETC. } No. 2018. Libelants' Exceptions to Claimant's Answer.

To the Honorable Cornelius H. Hanford, judge of said court:

The libelants T. J. King and A. Winge, except to the answer of the North American Transportation and Trading Company herein, as follows:

I.

They except to the whole of the affirmative matter in said answer, for the reason that the same is insufficient in law to constitute any answer or defense to the libel herein.

Wherefore libellants pray that the affirmative defense in said an-

swer be held insufficient and that a decree pass as prayed in the libel herein.

PRESTON & EMBREE,
Proctors for Libellants.

To Messrs. Bausman & Kelleher, proctors for claimant herein:

You will please take notice that the exceptions above will be brought on for hearing before the court in the afternoon of Thursday, June 6th, 1901, or as soon thereafter as counsel can be heard.

PRESTON & EMBREE,
Proctors for Libellants.

28 In the District Court of the United States for the District of Washington, Northern Division.

T. J. KING and A. WINGE, Libellants,
vs.
THE STEAMSHIP ROANOKE, ETC.
} No. 2018. Exceptions of Intervening Libellant, Fraser, to the Answer.

To the Honorable Cornelius H. Hanford, judge of said court:

The intervening libelant, W. B. Fraser, excepts to the answer of the North American Transportation & Trading Company herein, as follows:

I.

Excepts to all of the affirmative portion of the answer to the intervening libel for the reason that the same is insufficient in law to constitute an answer or defense to the intervening libel herein.

Wherefore this intervening libellant prays that the affirmative portion of said answer be held insufficient and that a decree pass as prayed in the intervening libel herein.

PRESTON & EMBREE,
Proctors for Intervening Libellant, W. B. Fraser.

To Messrs. Bausman & Kelleher, proctors for claimant herein:

The exceptions above will be brought on for hearing before the court in the afternoon of Thursday, June 6th, 1901, or as soon thereafter as counsel can be heard.

PRESTON & EMBREE,
Proctors for Intervening Libellant.

Service and receipt of a copy of the within exceptions are hereby admitted this June 4, 1901.

BAUSMAN & KELLEHER,
Proctors for Claimant.

Indorsed: Intervening libellant's and libellants' exceptions to claimant's answer. Filed in the U. S. district — dist. of Washington Jun- 4 1901 R. M. Hopkins, clerk, H. M. Walthew, deputy.

29 In the District Court of the United States for the District of Washington, Northern Division.

T. J. KING and A. WINGE, Copartners as King & Winge, Libelants,
vs.
THE STEAMSHIP ROANOKE, HER ENGINES, BOILERS, Tackle, Apparel, and Furniture. } Decree.

This cause coming on to be heard on exception of libelants and of intervening libelants to claimant's answer, and these having been fully heard, it is ordered that both the exceptions be and they are hereby sustained, to which claimant singly excepts and the exception is allowed.

And claimant now declining to plead further and electing to stand upon each of its answers it is further ordered and decreed that libelants T. J. King and A. Winge, recover against claimant North American Transportation & Trading Company and its stipulator the sum of three hundred and twenty-three dollars with interest from this date and costs, and that they have execution therefor, and that intervening libelant W. B. Fraser recover against claimant North American Transportation & Trading Co. and its stipulator, the sum of one hundred and fifty and $\frac{25}{100}$ dollars with interest from this date and costs. To this decree claimant excepts and its exception is allowed.

C. H. HANFORD, *Judge.*

Dated this 6th day of June, 1901.

Indorsed: Decree. Filed in the U. S. district court, dist. of Washington Jun-7 1901 R. M. Hopkins, clerk, H. M. Walthew, deputy.

30 In the District Court of the United States for the District of Washington, Northern Division.

T. J. KING and A. WINGE, Copartners as King & Winge, Libelants,
vs.
THE STEAMSHIP ROANOKE, NORTH AMERICAN Transportation & Trading Co., Claimant. } Appeal and Order Allowing Appeal.

The above-named claimant North American Transportation & Trading Co., considering itself aggrieved by the decree herein dated June 6, 1901, does hereby appeal therefrom and from each and all of it to the Supreme Court of the United States and prays that this its appeal may be allowed, and that a transcript of the record, proceedings and papers upon which that decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

BAUSMAN & KELLEHER,
Proctors for Claimants.

Dated June 7th, 1901.

On this 7th day of June, 1901, it is ordered that an appeal be allowed as prayed for.

C. H. HANFORD,
District Judge.

Indorsed: Appeal and order allowing appeal. Filed in the U. S. district court dist. of Washington Jun-7 1901 R. M. Hopkins, clerk, H. M. Walthew, deputy.

31 In the District Court of the United States for the District of Washington, Northern Division.

T. J. KING and A. WINGE, Copartners as King & Winge, Libelants,
vs.
THE STEAMSHIP ROANOKE, NORTH AMERICAN Transportation & Trading Co., Claimant.
} Assignment of Error.

The above-named claimant, North American Transportation & Trading Co., comes now and says that in the record and proceedings in the above-entitled cause and in the decree therein dated June 6, 1901, there is manifest error, to wit:

I.

The court erred in sustaining the exception of libelants to the answer of this claimant.

II.

The court erred in sustaining the exception of intervening libelant to the answer of this claimant.

III.

The court erred in entering a decree against this claimant in favor of the libelants and intervening libelant.

Wherefore, claimant prays that this its assignment of errors be entered of record and that upon the hearing of this appeal it be adjudged by the United States Supreme Court that the decree herein be reversed in all things, and that claimant be granted relief according to its answers.

June 7th, 1901.

NORTH AMERICAN TRANSPORTATION & TRADING CO.,
By BAUSMAN & KELLEHER, *Its Proctors.*

Indorsed: Assignment of errors. Filed in the U. S. district court, dist. of Washington Jun-7 1901 R. M. Hopkins, clerk, H. M. Walthew, deputy.

32 In the District Court of the United States for the District of Washington, Northern Division.

T. J. KING and A. WINGE, Copartners as King & Winge, Libelants,
vs.
THE STEAMSHIP "ROANOKE," NORTH AMERICAN Transportation & Trading Company, Claimant.
} Bond on Appeal and Supersedeas.

Know all men by these presents, that we North American Transportation & Trading Co. as principal, and the American Bonding and Trust Company of Baltimore City, as surety, are held and firmly bound unto T. J. King and A. Winge, copartners as King & Winge, and to W. B. Fraser and to each and every of them, in the sum of fifteen hundred dollars ($1500.00) to be paid to each or all of them, and for the payment of which, we bind ourselves, our, and each of our successors, jointly and severally, firmly by these presents:

The condition of the foregoing bond is this—

Whereas the above-named King & Winge and the above-named Fraser, did on the seventh day of June, 1901, recover against the above-bounden North American Transportation & Trading Co., by decree that day dated herein, the sum of three hundred and twenty-three and of one hundred and fifty and $\frac{25}{100}$ dollars, respectively, and

Whereas, the North American Transportation and Trading Co. has appealed to the Supreme Court of the United States to reverse that decree;

Now, if the above-named North American Transportation and Trading Company shall prosecute its appeal to effect and answer all damages and costs, if it fail to make its appeal good, then this obligation shall be null and void, otherwise in full force and effect.

In witness whereof the said principal and said surety have
33 caused these presents to be executed by its duly authorized officers and their corporate seals, respectively, to be hereunto attached this seventh day of June, A. D. 1901.

NORTH AMERICAN TRANSPORTATION & TRADING COMPANY,
By R. B. SNOWDON, *Its Sec'y.*
[SEAL.] THE AMERICAN BONDING AND TRUST COMPANY OF BALTIMORE CITY,
By FREDERICK A. WING, *Its Vice-President.*

Attest: CHARLES S. HILLS,
Its Assistant Secretary.

(5c. revenue stamp affixed and cancelled.)

The foregoing bond approved this 7th day of June 1901.

C. H. HANFORD,
District Judge.

Indorsed: Bond on appeal and supersedeas. Filed in the U. S district court dist. of Washington Jun- 7 1901 R. M. Hopkins, clerk H. M. Walthew, deputy.

34 In the District Court of the United States for the District of Washington, Northern Division.

T. J. KING and A. WING, Copartners as King & Winge, Libelants,
vs.
THE STEAMSHIP ROANOKE, NORTH American Transportation & Trading Co., Claimant.
} Certified Question on Appeal.

I, C. H. Hanford, district judge by whom the decree herein was signed, do now, on the 7th day of June, 1901, being the June term at which the decree was signed and entered, certify as follows:

King and Winge, libelants, allege that between December 5th and 22nd in the port of Seattle, Washington, they had furnished spars and timber of the reasonable value of ninety dollars, and performed labor of the reasonable value of two hundred and thirty-three dollars, for the repair of the steamship Roanoke, at the request of its owner's contractors, who "had full charge of the alteration and repair of the said steamship." This they allege was done on the credit of the Roanoke, which was an American vessel.

The intervening libelant, W. B. Fraser, made the same allegations and claimed the sum of one hundred and fifty dollars and twenty-five cents.

The North American Transportation & Trading Co. appeared as claimant and owner and the vessel was released upon its stipulation.

It admitted all the allegations of the libel except that the work was done on the credit of the ship, which it denied except that it admitted that libelants had acted under the belief that they had a lien by virtue of law. It then alleged its incorporation and existence under the laws of the State of Illinois, the residence there at all times of its president and general manager, its maintaining only agencies at Seattle and at other places in Alaska and Canada,
35 and its enjoying a high credit. The Roanoke it alleged to be an ocean-going vessel registered at Chicago, Illinois, under the navigation laws of the United States, with the name of Chicago painted on her stern. She was alleged to have been purchased by claimant in 1898 on the Atlantic coast, and, upon the Pacific coast since that time employed between Seattle and the mouth of the Yukon in the summer, and between San Francisco and southern ports in the winter. It was further alleged that the claimant had never given any order for the material and labor described in the libel and that these were furnished on the order of the contractor, who, before the filing of the libel and without any knowledge by claimant of these unpaid claims, had been paid by this claimant for these materials and labor in full. It was alleged in conclusion that the lien claimed by libelants was claimed under sections 5953 and

5954 of Bellinger's Code and Statutes of Washington, that such a lien was in this instance void being in violation of the 8th section of the first article of the Constitution of the United States conferring upon Congress the power to regulate commerce among the several States, was an illegal burden upon interstate commerce, and in violation also of the 14th article of the Constitution of the United States as depriving claimant of its property without due process of law and without its equal protection, and was in violation of the second section of the third article of the Constitution conferring on the courts of the United States admiralty and maritime jurisdiction.

To the intervening libel of Fraser the same answer was made.

To each of these answers respectively the libelants and intervening libelant excepted as insufficient, and the whole of each, to constitute any answer or defense to the libel.

36 The exceptions were sustained, the claimant elected to stand on its answer and a decree was entered against it and its stipulators for the whole sum claimed in the libels.

Now, therefore, I do certify to the Supreme Court the following question: Were the alleged liens void and should the exceptions to the answers have been overruled, that is to say

(*a.*) Are sections 5953 and 5954 of Bellinger's Code and Statutes of the State of Washington as to ships owned and registered in other States in conflict with the 8th section of the first article of the Constitution of the United States.

(*b.*) Are they in violation of its 14th article as depriving the owner of his property without due process of law in so far as they attempt to compel the owners after payment to the contractor to pay the libelants also.

(*c.*) Are they in conflict with the second section of the third article of the Constitution of the United States conferring on the United States courts jurisdiction in admiralty.

C. H. HANFORD, *Judge.*

Indorsed: Certified questions on appeal. Filed in the U. S. district court dist. of Washington Jun- 7 1901 R. M. Hopkins, clerk, H. M. Walthew, deputy.

37 UNITED STATES OF AMERICA, *ss:*

To T. J. King & A. Winge, copartners as King & Winge, and to W. B. Fraser:

You and each of you are hereby cited and admonished to be and appear at a term of the Supreme Court of the United States to be holden in the city of Washington, District of Columbia, within sixty days from the date of this citation, pursuant to an appeal filed in the clerk's office of the district court of the United States for district of Washington, wherein North American Transportation & Trading Co. as claimant of the steamship Roanoke is appellant and you and each of you are respondents, to show cause, if any there be why the decree in that appeal described should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States this 7th day of June, 1901.

[Seal U. S. District Court.]

C. H. HANFORD,
District Judge.

Service of the foregoing citation and copy thereof acknowledged this 7 day of June 1901.

PRESTON & EMBREE,
Proctors for King & Winge and W. B. Fraser.

Indorsed: Citation on appeal. Filed in the U. S. district court dist. of Washington Jun- 7 1901 R. M. Hopkins, clerk, A. N. Moore, deputy.

38 In the District Court of the United States for the District of Washington, Northern Division.

T. J. KING and A. WINGE, Copartners as King & Winge, Libelants,
vs.
STEAMSHIP "ROANOKE," NORTH AMERICAN TRANSPORTATION & TRADING Company, Claimant; W. B. Fraser, Intervenor. } No. 2018.

UNITED STATES OF AMERICA, } ss:
District of Washington, }

I, R. M. Hopkins, clerk of the district court of the United States for the district of Washington, do hereby certify that the foregoing thirty-eight (38) typewritten pages, numbered from one (1) to thirty-eight (38), both inclusive, contain in themselves, and not by reference, a complete record and transcript of the final record and of all the papers, exhibits and proceedings necessary to the hearing of the appeal of North American Transportation and Trading Company, claimant, in a case numbered 2018 in this court, entitled T. J. King and A. Winge, libelants, W. B. Fraser, intervening libelant, *vs.* S. S. Roanoke, North American Transportation and Trading Company, claimant.

I further certify that the cost of preparing and certifying the foregoing transcript is the sum of $11.75, and that said sum has been paid to me by the appellant North American Transportation and Trading Company. No opinion has been given or filed in said cause.

In witness whereof I have hereunto set my hand and affixed the seal of said district court, at my office, in the city of Seattle, in said district, this 17th day of June, 1901.

[Seal U. S. District Court, District of Washington.]

R. M. HOPKINS,
Clerk of the District Court of the United States for the District of Washington.

{ Ten-cent United States internal-revenue stamp, canceled Jun- 17, 1901. R. M. H. }

39 UNITED STATES OF AMERICA, *ss:*

To T. J. King & A. Winge, copartners as King & Winge, and to W. B. Fraser:

You and each of you are hereby cited and admonished to be and appear at a term of the Supreme Court of the United States to be holden in the city of Washington, District of Columbia within sixty days from the date of this citation, pursuant to an appeal filed in the clerk's office of the district court of the United States for the district of Washington, wherein North American Transportation & Trading Co. as claimant of the steamship Roanoke *to* appellant and you and each of you are respondents, to show cause if any there be why the decree in that appeal described should not be corrected and speedy justice should not be done to the parties on that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States this 7th day of June, 1901.

[Seal U. S. District Court, District of Washington.]

C. H. HANFORD,
District Judge.

Service of the foregoing citation and copy thereof acknowledged this 7 day of June, 1901.

PRESTON & EMBREE,
Proctors for King & Winge and W. B. Fraser.

40 [Endorsed:] Original No. 2018 H. In the district court of U. S. district of Washington T. J. King *et al.* libellants *vs.* Steamship Roanoke Citation on appeal Filed in the U. S. district court, dist. of Washington, Jun- 7 1901 R. M. Hopkins, clerk A. N. Moore deputy Bausman, Kelleher & Emory attorneys for —, rooms 626, 627 and 628 Bailey building Seattle, Washington.

Endorsed on cover: File No. 18,210. Washington D. C. U. S. Term No. 357. The North American Transportation and Trading Company as claimant of the steamship "Roanoke," appellant, *vs.* T. J. King and A. Winge, copartners as King & Winge, and W. B. Fraser. Filed June 26th, 1901.

IN THE

Supreme Court of the United States

OCTOBER TERM 1902

No. 123

THE NORTH AMERICAN TRANSPORTATION AND TRADING COMPANY, as claimant of the Steamship "Roanoke," APPELLANT,

vs.

T. J. KING and A. WINGE, copartners as KING & WINGE, and W. B. FRASER.

BRIEF OF APPELLANT

STATEMENT.

While a certificate seems not to be necessary in appeal on a constitutional question, one has been furnished by the lower court, and, as it states the case concisely, we can probably do no better now than to set it out in full.

"King and Winge, libelants, alleged that between December 5th and 22nd in the port of Seattle, Washington, they had furnished spars and timber of the reasonable value of ninety dollars, and performed labor of the rea-

sonable value of two hundred and thirty-three dollars, for the repair of the steamship Roanoke, at the request of its owner's contractors, who 'had full charge of the alteration and repair of the said steamship.' This they alleged was done on the credit of the Roanoke, which was an American vessel.

"The intervening libelant, W. H. Fraser, made the same allegations and claimed the sum of one hundred and fifty dollars and twenty-five cents.

"The North American Transportation & Trading Co. appeared as claimant and owner and the vessel was released upon its stipulation.

"It admitted all the allegations of the libel except that the work was done on the credit of the ship, which it denied except that it admitted that libelants had acted under the belief that they had a lien by virtue of law. It then alleged its incorporation and existence under the laws of the State of Illinois, the residence there at all times of its president and general manager, its maintaining only agencies at Seattle and at other places in Alaska and Canada, and its enjoying a high credit. The Roanoke it alleged to be an ocean-going vessel registered at Chicago, Illinois, under the navigation laws of the United States, with the name of Chicago painted on her stern. She was alleged to have been purchased by claimant in 1898 on the Atlantic coast, and employed upon the Pacific coast since that time between Seattle and the mouth of the Yukon in the Summer, and between San Francisco and Southern ports in the Winter. It was further alleged that the claimant had never given any order for the material and labor described in the libel, and that these were furnished on the order of the contractor, who, before the filing of the libel and without any knowledge by claimant of these un-

paid claims, had been paid by this claimant for these materials and labor in full. It was alleged in conclusion that the lien claimed by libelants was claimed under sections 5953 and 5954 of Ballinger's Code and Statutes of Washington, that such a lien was in this instance void, being in violation of the 8th section of the First article of the Constitution of the United States conferring upon Congress the power to regulate commerce among the several states, was an illegal burden upon interstate commerce, and in violation also of the 14th article of the Constitution of the United States as depriving claimant of its property without due process of law and without its equal protection, and was in violation of the second section of the third article of the Constitution conferring on the courts of the United States admiralty and maritime jurisdiction.

"To the intervening libel of Fraser the same answer was made.

"To each of these answers respectively the libelants and intervening libelant excepted as insufficient, and the whole of each, to constitute any answer or defense to the libel.

"The exceptions were sustained, the claimant elected to stand on its answer and a decree was entered against it and its stipulators for the whole sum claimed in the libel.

"Now, therefore, I do certify to the Supreme Court the following questions: Were the alleged liens void and should the exceptions to the answers have been overruled, that is to say:

"(*a*) Are sections 5953 and 5954 of Ballinger's Codes and Statutes of the State of Washington, as to ships owned and registered in other states, in conflict with the 8th section of the first article of the Constitution of the United States?

"(*b*) Are they in violation of its 14th article as depriving the owner of his property without due process of law in so far as they attempt to compel the owners after payment to the contractor to pay the libelants also?

"(*c*) Are they in conflict with the second section of the third article of the Constitution of the United States conferring on the United States courts jurisdiction in admiralty?"

SPECIFICATION OF ERROR.

The court erred in sustaining the exceptions of libelants to the answer of claimant, for the reason that the statute of Washington, on which libellants claim a lien is, as applied to the "Roanoke," in violation of the Constitution of the United States, to wit, the 8th section of its first article and the 2d section of its third article.

ARGUMENT.

This case is brought here by a non-resident ship and its non-resident owner to resist a lien statute of the State of Washington. That statute is as follows (2 Ballinger's Code, secs. 5953-4):

"5953. All steamers, vessels, and boats, their tackle, apparel and furniture, are liable—

* * * * * * *

"3. For work done or material furnished in this state, for their construction, repair, or equipment, at the request of their respectve owners, masters, agents, consignees, contractors, sub-contractors, or other person or persons

having charge in whole or in part of their construction, alteration, repair, or equipment; and every contractor, sub-contractor, builder, or person having charge, either in whole or in part, of the construction, alteration, repair, or equipment of any vessel shall be held to be the agent of the owner, for the purposes of this chapter;

"Demands for these several causes constitute liens upon all steamers, vessels, and boats, and their tackle, apparel, and furniture, and have priority in their order herein enumerated, and have preference over all other demands; but such liens only continue in force for the period of three years from the time the cause of action accrued."

"5954. Such liens may be enforced in all cases of maritime contracts or service by a suit in admiralty, *in rem*, and the law regulating proceedings in admiralty shall govern in all such suits; and in all cases of contracts or service not maritime by a civil action in any district court in this territory."

The statute is not particularly referred to in the libel, but the pleader makes his reliance on it clear by setting up the request of a contractor and using the statutory phrase as to the relation between the owner and the contractor, the latter "having full charge of the alteration and repair" (p. 2 V.), besides which, our allegation in answer that the statute is the basis of their claim (p. 13, IV) is admitted by their exceptions. It is apparent that the statute was relied upon, as no lien for a contractor's debts would be allowed a sub-contractor by the law maritime. It was on the request, not of the ship's master or other officer that the services were rendered and the material furnished, but on the request as libellants themselves allege, of contractors in charge of repairs. Thus the master, whose implied authority to bind the ship might have been the basis of a maritime lien, had nothing to do

with the matter. Did the owner, then? Only as the contractors may have been his agents by pure force of the statute for the time being. But if it were the owner in person, so much the worse. This would actually prevent a lien under the law maritime, for it is a familiar principle that what is done at the request of an owner is presumed to have been done merely on his personal credit whether at his home or in a foreign port (*The Jennie Middleton*, 94 Fed., 683; *The Havana*, 92 Fed., 1007), especially if it be admitted, as here, that his personal credit was high. Neither facts nor phraseology being employed such as would aim at a lien under the general maritime law, the libel must rest, and was manifestly intended to rest, upon the statute.

That the Roanoke was a non-resident ship must, of course, be conceded to us. Registered in a port, and belonging to a citizen, of Illinois, she was property only of the State of Illinois. (*Hays vs. Pacific M. S. Co.*, 17 How., 596; *Morgan vs. Parham*, 16 Wall., 471.) However much she might loiter in other waters, she was not liable even to taxation outside of Illinois, for she had no other *situs*. (Cases *supra* and *Pullman Co. v. Pennsylvania*, 141 U. S. at 32.)

THE JURISDICTION OF THIS COURT.

The amount involved is sufficient. (*The Paquette Habana*, 175 U. S. 677.) That the constitutional question was raised by the defense and not by libelants is no objection. Direct appeal may be taken no matter which party raised such question in the lower court. (*Loeb vs. Trustees*, 179 U. S. 472; *Connelly vs. Union Sewer Pipe Co.*, 184 U. S. 540.)

We will now proceed to discuss the specifications of error.

FIRST QUESTION.

Does the Washington statute offend the commerce clause?

In no part of that subject of inter-state commerce which organic law has bestowed on our common government has the tenderness and jealousy of national policy been so great as in that of navigation. This is one province which, relinquished by the states, has been everywhere explored, occupied, and subjected by its new possessor. Nowhere is anything left uncertain. The regulations of government are wrought out in the finest detail. Nothing has been too small. The placing of buoys, the licensing of masters, engineers and pilots, and even the wages of seamen, have become the subject of statutes. The navigation laws of the United States are in themselves a volume.

Nor has this vigilance and care, this exclusiveness of possession, been confined to the legislature. The national courts have been equally zealous. From the time of *Gibbons v. Ogden,* which announced the federal authority over navigation, to *The Genessee Chief,* which extended the territorial operation of admiralty, down to the present day the decisions of this court and its satellite tribunals have unceasingly maintained and enlarged the original appropriations. The maritime laws of the national government cannot even be enforced by the states. No more can the uncodified jurisprudence of the seas, for courts of admiralty belong to the federal government alone. Whatever encroachments of state law may be tolerated in commerce on land, commerce on sea, it is held, is a subject even more exclusively within the national care.

"Commerce on land between the different states is so strikingly dissimilar, in many respects, from commerce on water, that it is often difficult to regard them in the same aspect in reference to the respective constitutional powers and duties of the state and federal governments. No doubt commerce by water was principally in the minds of those who framed and adopted the federal constitution. * * * Again, the vehicles of commerce by water being instruments of inter-communication with other nations, the regulation of them is assumed by the national legislature. So that state interference with transportation by water and especially by sea is at once clearly marked and distinctly discernible."

This language from *Railroad Co. v. Maryland,* 21 Wall. 456, 470, is quoted with approval even by that majority in this court who conceded to the states certain rights as to commerce by land. (*Pullman Co. v. Pennsylvania,* 141 U. S. at 32). Cars that were owned in one state might be taxed if moving in another, but the ships of another state never.

The very sale, hypothecation and transfer of ships is regulated by the navigation laws of the Union, and those laws have their origin in the interstate commerce provisions of the federal constitution. Why should one state be allowed, then, to fasten liens upon vessels of other states? Does this not directly invade the interstate commerce right of the general government?

Any other view seems full of danger. State liens might become unreasonable. But, grant that they remained reasonable, their very want of uniformity is vexatious to interstate commerce. To this it may be suggested that, if ship owners do not like the lien laws of other states, let them keep their ships out of them. But this will not do. The duty of the federal government to regulate, is

also its duty to protect, commerce, and to protect is to promote. It is the national policy under the constitution to make the ports of each state attractive to citizens of every other so far as can be done by wise and uniform laws, and if this last be thought a consideration for Congress rather than the courts, it is at least the duty of the latter, since they cannot enact national laws, to restrain the operation of unreasonable local laws.

Hard as it is to conceive that the federal government will ever permit the encroachment of State liens where both commerce and admiralty are concerned, it is altogether too hard to imagine that they will permit such liens to be unreasonable in themselves. In *The Belfast*, 7 Wall. 624, this court, in sustaining (as to home port only, of course) a local lien and allowing State laws to provide regulations for such liens, does not fail to qualify the privilege with the word "reasonable." We may therefore ask whether the present lien in reasonable.

The mere reading of this law shows that it is one of the most unreasonable ever enacted of its kind.

For three years this lien continues. No record, no notice, actual or constructive, is required. It is wholly secret. No conditions or limitations in favor of freeing the ship at some early day from the thing appear, such as when the ship is transferred to a new owner after a reasonable period, or after her departure from the State. It stiffly binds the owner, though he must, some time or other, make his payments to the contractor, and cannot be expected to wait three years. It hampers shipping because men will be discouraged if, after so long a time, bills of unknown supply men can be enforced. In three years' time a ship, it may well be apprehended, will have incurred no man can tell how many expenses. Take our

own instance. We have paid the contractor in full in perfect ignorance (13, III). Now we must pay again under an unreasonable law, which did not so much as require that the creditors, who might easily thus have protected us, should have filed in some place or other some sort of a notice to advise us.

A more complete way to entangle shipping and to make vexatious and uncertain a pursuit which, because it is hazardous to begin with, the policy of legislation has been to simplify, would be hard to find than this of Washington. Let us look at the maritime lien statutes of the several states as they are collected, say, in Jones on Liens (vol. 2, secs. 1736 *et seq.*). Where is there one half so burdensome and unfair as this before us now? In every other state qualification or moderation in some respect is observable, but not here. Some of the states extend the lien only to the original construction of ships, others only to certain kinds of supply or material men. The Washington law sweeps in all and makes the contractor an agent. Many of the laws require some public record to afford notice, this of Washington none. Above all things do we observe the general moderation as to time, which in none of the statutes exceeds a year, except in Michigan (and there only a year as to innocent purchasers), and in many instances is limited to days. The known expedition of admiralty is almost universally favored.

Attacked under the commerce clause of the Constitution, this Washington statute will perhaps be defended as a mere measure for the collection of debts, a thing to which the instruments of interstate commerce are obliged to submit. To this we reply that no State shall so frame its laws for the collection of debts as to burden commerce unnecessarily. It was the states themselves that volun-

tarily surrendered (the chief and, at any rate, the original motive to a closer union) the rights over interstate commerce, and even in the collection of debts they must not visibly hamper it. Shall a State say, for instance, that a ship or a railway car, being seized on lien or attachment, shall not by bond, or any other process, be released until after trial, and be subject meanwhile to keepers' fees perhaps for years?

SECOND QUESTION.

This question we deem unnecessary to consider. Mechanics' lien statutes have generally been adjudged valid as to due process of law by the inferior courts of the country, though no decision on that point has ever been ever been rendered here. We are content to pass the subject.

THIRD QUESTION.

Does the Washington statute invade the jurisdiction in admiralty?

That a state may enact lien laws as to ships owned within it has long been settled. Not a line, however, of any decision to that effect can be fairly construed as authorizing also liens on ships owned *without* the state. Indeed, it is questionable whether such liens were intended to be supported, even within the state, beyond the *home port*, but, be this as it may, they are supported on local ships only. Examine any decision in which one of these liens was directly involved and it will be found to go no further, nay, by plain intendment, to forbid more. (*The General Smith*, 4 Wheaton, 438; *Peyroux vs. Howard*, 7 Peters, 324; *The Belfast*, 7 Wall. 624; *The Lottawanna*, 21 Wall. 558; *The J. E. Rumbell*, 148 U. S. 1.)

These cases, in the order we have cited them, fairly record the beginning, the continuation, and the present

status of decisions supporting state lien laws on vessels. Many others can be found, but all had to do only with lien laws *in home ports*. Nor can any fair encouragement be found in them toward extending such liens to *vessels beyond home ports*. The usual language in these opinions is about what we find in *The Lottawanna*, where Justice Bradley said (the italics are ours):

"So long as Congress does not interpose to regulate the subject, the rights of material men furnishing necessaries to a vessel *in her home port* may be regulated in each state by state legislation."

The local lien was there sustained, for the ship belonged to the port of New Orleans, the services and supplies were furnished there, and there the libel was filed. *The J. E. Rumbell* is a recent expression on this subject. *The Rumbell* belonged to Chicago, "the residence of the owner and the home port of the vessel," and it was at Chicago that she was libeled. A decision of this court expressly upholding one of these liens upon vessels of other states is yet to be rendered. Indeed, the very arguments of the courts sustaining these home port laws plainly exclude their being extended to ships of other states. The argument in them is that, as the maritime law allows no lien in a home port, the domestic statute should be allowed to supply one. The converse of this would fairly appear to be that, when the general, or admiralty, system does supply such a lien (that is, on vessels when away from home), the domestic law is neither proper nor necessary. The language of this court in *The Belfast*, 7 Wall. 646, plainly suggests this:

"Such a lien does not arise from a contract for materials and supplies furnished to a vessel in her home port, and in respect to such contracts it is competent for the

states, under the decisions of this court, to create such liens as their legislatures may deem just and expedient, not amounting to a regulation of commerce, and to enact reasonable rules and regulations prescribing the mode of their enforcement."

Moreover, we find excellent authority affirmatively against any such extension. Story in *The Chusan* (2 Story, 455) gave his opinion against it in 1843. He spoke there as a Circuit Justice familiar with the original organization of our government, and yet speaking on this point not merely theoretically, for in 1843 he had before him *The General Smith* (the opinion there by himself) and *Peyroux v. Howard,* in which the Supreme Court had permitted the operation of local liens. To both these decisions he refers. But while he is thus one of the very founders of the right of local lien, he is positive neither of these decisions ever intended to extend it to vessels of other states. Of the New York lien law he says:

"This statute is, as I conceive, perfectly constitutional, as applied to cases of repairs of domestic ships, that is, of ships belonging to the ports of that state. * * * But in cases of foreign ships and supplies furnished to them the jurisdiction of the courts of the United States is governed by the constitution and laws of the United States, and is in no sense governed, controlled or limited by the local legislation. * * * For myself, I can only say that during the whole of my judicial life I have never up to the present hour heard a single doubt breathed upon the subject. The distinction between foreign ships and domestic ships as to this matter of lien was stated with great precision and accuracy by Mr. Justice Thompson in *Peyroux v. Howard,* * * * Language of similar import was used in the case of *The General Smith.* Now, it is impossible to read this language and not perceive that the court never entertained the slightest notion

that the question of lien for repairs and supplies of a foreign ship did depend or could depend upon the local law of a state. It was treated throughout as governed solely by the maritime law. * * Besides, by the constitution of the United States, Congress has the power to regulate commerce with foreign nations and among the several states. The power to regulate commerce includes the power to regulate navigation with foreign powers, and it is an exclusive power in Congress."

The Chusan was cited with approval twelve years later, in *Steamboat New York v. Rae,* 59 U. S., 223, in which a local rule of navigation of New York was held good as to domestic, and bad as to foreign ships; in *Hall v. DeCuir,* 95 U. S. 485, in 1877; in *The Globe* by Justice Nelson (2 Blatch. 427); and in *The Selah* (4 Sawyer, 40).

The Chusan is further approved and followed in *The Lyndhurst,* 48 Fed. 839, where it is decided that the New York lien law can not be made applicable to a New Jersey vessel.

In *The Electron,* 74 Fed. 689, the question was reserved as having been already by that court certified to this in another case not mentioned by name.

Since this appeal has been taken a new work, Hughes on Admiralty, p. 108, reviews the few authorities on this question, approves the opinion of Story, and says:

"As stated above, the distinction between supplies furnished to domestic vessels and to foreign vessels is largely artificial, and it is to be regretted that it was ever made. The symmetry of marine laws requires that the general doctrine be modified as little as possible. If state statutes can regulate not only claims against domestic vessels, but against foreign vessels, they can add liens to maritime causes of action that did not exist before, and

take them away where they did exist. Consequently, a foreign vessel would find a different law in every port. It would certainly seem more consistent with principle to hold, as is historically true, that the sole purpose and object of these state laws were to put domestic vessels on the same footing as foreign vessels. The converse of this, that they can reduce foreign vessels to the basis of domestic vessels, would be a great anomaly. Accordingly, the best considered decisions have held that the maritime rights of foreign vessels are independent of these state statutes (as an attempt to regulate them would be to interfere with the general admiralty jurisdiction), and that these statutes regulate only rights against domestic vessels."

IV.

In conclusion we would say (1) that as applied to vessels of other states, a local lien appears to us to invade the interstate commerce powers of the federal government; (2) that if any such law can be valid, it can not be this, because it is not a reasonable one; (3) that, as regards the admiralty jurisdiction of the federal government, such laws, whether reasonable in terms or not, are void as to vessels of other states, because wholly unnecessary, and in their nature incompatible with the complete system of admiralty and its policy.

On such considerations we trust the decision of the lower court will be reversed and that, having paid the principal contractor already, we shall be relieved from now paying the sub-contractors the whole sum anew.

FREDERICK BAUSMAN,
Counsel for Appellant.

Supreme Court of the United States

OCTOBER TERM, 1910

No. 178

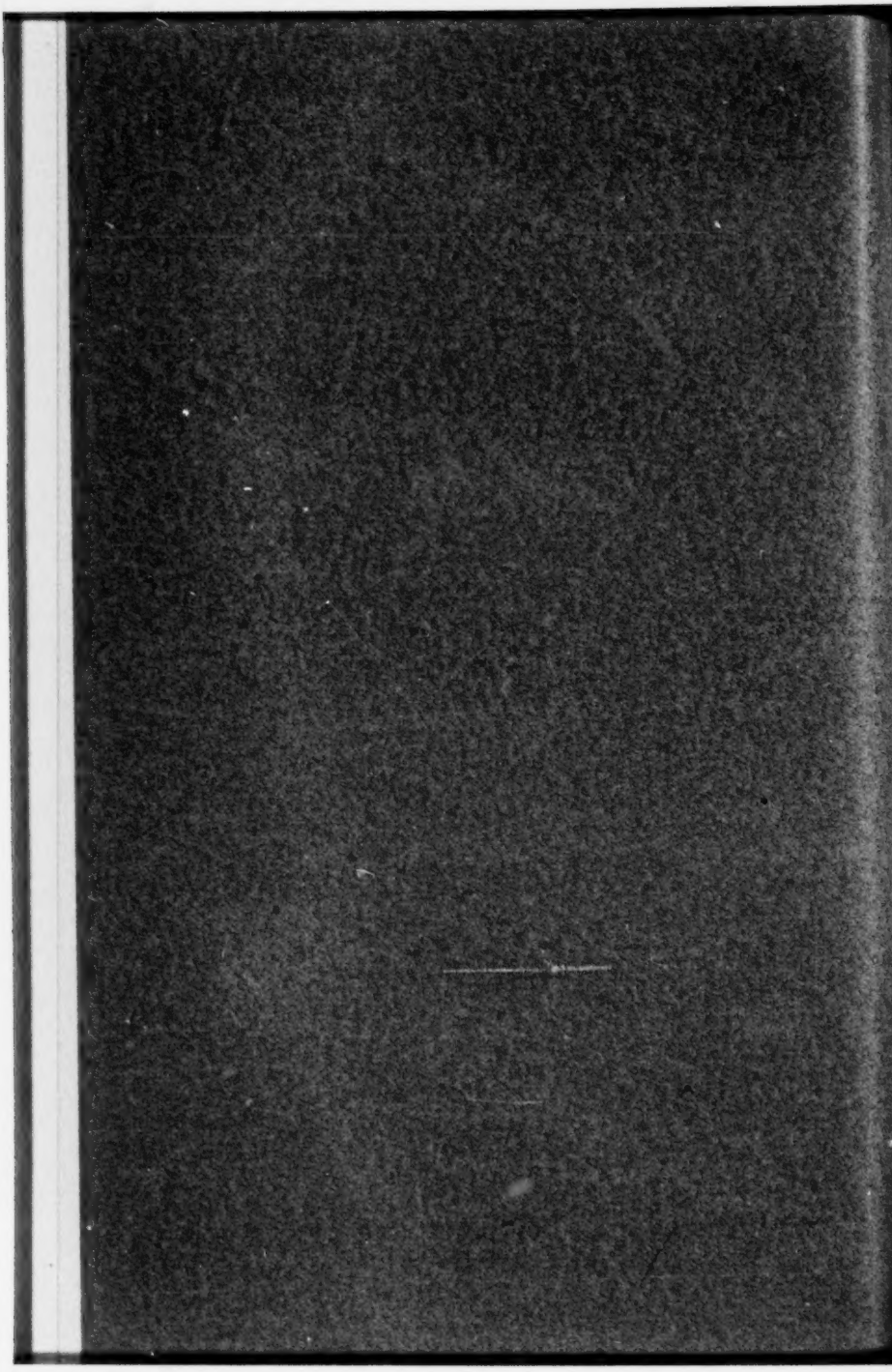
THE NORTH AMERICAN TRANSPORTATION AND TRADING COMPANY, as Owners of the Steamship "Komoka," Appellant,

vs.

T. J. KING and A. WINGE, copartners as KING & WINGE, and W. B. FRASER, Appellees.

REPLY BRIEF

FREDERICK DAUBMAN,
DANIEL KELLEHER,
Counsel for Appellant.



IN THE

Supreme Court of the United States

OCTOBER TERM, 1902

No. 123.

THE NORTH AMERICAN TRANSPORTATION AND TRADING COMPANY, as Claimant of the Steamship "Roanoke," APPELLANT,

vs.

T. J. KING and A. WINGE, copartners as KING & WINGE, and W. B. FRASER, APPELLEES.

REPLY BRIEF

REPLY.

THE JURISDICTION OF THIS COURT.

The act of 1891 allows a direct appeal "in any cause in which the constitution or law of a state is *claimed* to be in contravention of the constitution of the United States." You yourselves have had occasion to italicise the word "claimed" when interpreting this clause of the act, (*Loeb vs. Trustees,* 179 U. S. 472) and have pointed

out the difference between this appellate provision and the one relating to your review of decisions of state courts. It is enough that an honest, though erroneous, claim is made. As was said by Mr. Justice White for the court in *Penn Mutual Life Ins. Co. vs. Austin,* 168 U. S. 685; 18 Sup. Ct. 223.:

"The contention here made, however, is not that the bill, without color of right, alleges that the state law and city ordinances violate the constitution of the United States, but that such claim as alleged in the bill is legally unsound. The argument, then, in effect, is that the right to a direct appeal to this court does not exist where it is claimed that a state law violates the constitution of the United States, unless the claim be well founded. But it cannot be decided whether the claim is meritorious, and should be maintained, without taking jurisdiction of the case."

Accordingly, this court took jurisdiction there, though it decided the case without reference to the federal question at all.

Equally in point is *Holder vs. Aultman,* 169 U. S. 81, another case of direct appeal. There an Ohio corporation sued a Michigan defendant on a contract to do a certain kind of canvassing and selling in Michigan. The defendant set up that this contract was invalid in Michigan by reason of a Michigan statute which put restrictions and a tax upon corporations in the alleged situation of the plaintiff and declared void contracts *made* by them *in that state.* Neither the plaintiff nor the defendant, it is to be noticed, had invoked the federal constitution in the pleadings. Now, the lower court found, upon the trial, that the contract, though prepared in Michigan, was finally signed only in Ohio. The statute was therefore a bad defense. But the lower court went

further. It decided that the statute, even so far as it purported to apply to interstate business like the plaintiff's, was void under the federal constitution. The judgment below was therefore for the plaintiff. Then defendant brought the cause here by error direct. Was it a case, however, for direct appeal within the act of 1891? You so held. Your decision is all the more in point here because you agreed with the lower court that the contract was made in Ohio, whereas the Michigan law on its very face attacked only contracts made in Michigan. You could not, accordingly, say that the claim of its violating the federal constitution was correct. Did your jurisdiction then fail? Certainly not. The claim, though unnecessary or erroneous, had been set up in apparent good faith in the progress of the case and that, under the act, gave you the whole case for review. What you did was to retain jurisdiction, to ignore the federal question as unnecessary or wrong, and to decide in plaintiff's favor because the statute set up by defendant never intended to vitiate such a contract as plaintiff's at all.

In view of these decisions, and particularly the latter, we see little point in the objection made by the appellees here that we did not claim the Washington statute to be void in all cases, that we claimed it void only as to us in that instance. This is always the situation where a state law is attacked under the commerce clause. Such a law may be good in some instances and bad in others, for it is not necessarily unconstitutional in all, as the Michigan statute in the *Holder* case might have been good enough against contracts made in that state for performance there.

Passing to appellees' next point, we agree with them that, to secure review by you, we must show that our

questions were called to the attention of the lower court or were necessarily passed upon by it. We cannot agree with them, though, that these things did not happen there. What else was there in our answers to the libels but the constitutional claims? The allegations of the libels were almost entirely admitted by us and we then narrated the "Roanoke's" ocean going character and interstate business, together with her owner's (substantially in the language employed in *Morgan v. Parham,* 16 Wall. 471), and then expressly named and quoted the invoked clauses of the federal constitution so that there was nothing else for the court to consider. This brought us within numerous decisions of this court, for we had actually done everything reasonable to make our position plain. Over and above all, we secured from the lower court a certificate indisputably showing that he had considered our defenses. That certificate, however unnecessary for jurisdiction, is certainly not only useful in many other respects, but is a very fair way, we should think, in cases otherwise doubtful, of showing that the lower court actually did hear and pass upon a particular question.

Even when the federal constitution is not specifically referred to at all, this court retains jurisdiction where it can plainly see that the lower court could not have avoided passing on such a question (*Columbia Water Power Co. v. Columbia, etc., Co.* 172 U. S. 475, and cases cited.) Here the constitution is so positively appealed to as to leave this matter not open to serious debate.

Respectfully submitted,

FREDERICK BAUSMAN,
DANIEL KELLEHER,
Proctors for Appellant.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1902

No. 123.

THE NORTH AMERICAN TRANSPORTATION AND TRADING COMPANY, as Claimant of the Steamship "Roanoke," APPELLANT,

vs.

T. J. KING and A. WINGE, copartners as KING & WINGE, and W. B. FRASER, APPELLEES.

BRIEF OF APPELLEES

OBJECTIONS TO JURISDICTION OF THIS COURT.

This appeal, which is brought here direct from the decree of the District Court, is sought to be sustained by virtue of the provision in Section 5, of the Judiciary Act of March 3, 1891, that such appeal may be taken "In any cause in which the constitution or law of a state is claimed to be in contravention of the Constitution of the United

States." As counsel for appellant admits, there is no authority in the law for a certificate in this appeal. And it necessarily follows, therefore, that such certificate can furnish no aid to the jurisdiction of this Court. It will be observed that in the appellant's answers to the libels the claim is made, not that the state statutes are void, but that the liens are void, the language of the pleader being that "The lien attempted to be conferred by those statutes is, *in this instance,* void, being in violation" of the constitution (Record, pp. 13, 15). It is not claimed that the lien conferred by these statutes is in *all* cases void, but on the contrary, it is, not only in the answers, but also in appellant's brief, admitted that these statutes and the lien thereby conferred are perfectly valid as applied to domestic vessels. The claim of appellant goes, then, not to the power of the state legislature to enact these statutes, but rather to their proper construction, it being claimed that they must be limited in their application to domestic vessels. That a statute is "in contravention" of the constitution means nothing more or less than that it is invalid. And the words, "The validity of a statute," as used in the Act of Congress of March 3, 1885, (23 Stat. at L. 443) regulating appeals to this Court in certain cases, "refers to the power of congress to pass the particular statute at all, and not to mere judicial construction as contradistinguished from a denial of legislative power."

Baltimore R. Co. vs. Hopkins, 130 U. S. 210.

Moreover, a record presents no constitutional question for review by this Court in an appeal like this, when it "fails to disclose that a controversy on such subject was called to the attention of the Court below prior to the

hearing, and when it also does not appear that the Court below *considered or necessarily* passed upon an issue of that character." (Italics Ours.)

State of Arkansas vs. Schlierholz, 179 U. S. 598, 601.

The record here fails to show, not only that the lower court necessarily passed upon the constitutional questions urged here, but it fails to show that the court even considered them. Granting, for sake of argument, that appellant in his answers clearly raised these questions, for aught the record shows (no opinion having been filed) the court may not have found their determination necessary in disposing of the exceptions to these answers. The decree recites that these exceptions were sustained and that the appellant declined to plead further and elected to stand upon its answers. (Record, p. 18). It may be that the Court determined that the answers failed to sufficiently allege that the "Roanoke" was engaged in interstate commerce.

If it be said that the answers presented the further question of the invalidity of the statute as depriving the appellant of its property without due process of law, we reply that the appellant has in its brief expressly waived that question, and that to authorize a direct appeal to this court upon a claim of the invalidity of a state statute, "the claim must be real and substantial; a mere claim in words is not enough."

City of Lampasas vs. Bell, 180 U .S. 276, 281.

ON THE MERITS.

Does the statute of Washington violate the commerce clause of the constitution?

It is well settled that the laws of the state in which personal property is situated govern respecting the transfer of title to and liens thereon, even where the owner is a non-resident of the state.

Walworth vs. Harris, 129 U. S. 355.
Brown vs. Smart, 145 U. S. 454.
Pullman Company vs. Pennsylvania, 141 U. S. 32.
The Iris, 100 Fed. 104, 106.
Green vs. Van Buskirk, 5 Wall. 307.
Id., 7 Wall. 139.

In determining the relative power of the states and of congress concerning foreign and interstate commerce, the place of residence of the owner of the instruments of such commerce is wholly immaterial. A vessel is none the less engaged in interstate commerce because her owner resides in one of the states between which such commerce is carried on. Therefore, in considering whether the statute of the State of Washington conferring liens on vessels violates the commerce clause of the constitution, the place of residence of the owner may be laid aside.

The uniform current of decisions of this Court is to the effect that in those respects in which congress has not exercised its power to regulate interstate and foreign commerce, state legislation is valid so long as it affects such commerce only indirectly or remotely.

"As has been often said, legislation (by a state) may in a great variety of ways affect commerce and persons engaged in it, without constituting a regulation of it, within the meaning of the constitution, unless, under the guise of police regulations, it imposes a direct burden upon in-

terstate commerce, or directly interferes with its freedom."

Kidd vs. Pearson, 128 U. S. 1, and citations.
Lake Shore R. Co. vs. Ohio, 173 U. S. 285, and citations.
Missouri R. Co. vs. Haber, 169 U. S. 613.
Louisville R. Co. vs. Kentucky, 161 U. S. 677.

"The power of the state to impose restraints and burdens upon persons and property in conservation and promotion of the public health, good order and prosperity, is a power originally and always belonging to the states, not surrendered by them to the general government, nor directly restrained by the constitution of the United States and essentially exclusive."

Wilkerson vs. Rohrer, 140 U. S. 545.

This reserved power in the states is not limited to the right to legislate concerning the public health, morals or safety, but extends also to and includes the power to legislate respecting matters of *mere convenience* and the prosperity of the people.

Lake Shore R. Co. vs. Ohio, 173 U. S. 285.

Counsel in his brief seems to admit this right on the part of the state to legislate as applied to commerce on land, but denies the right respecting commerce by water. There seems to be no just ground for such a distinction. Indeed, the Court, in Railroad Company vs. Maryland, 21 Wallace 456, cited by appellant, said that (Italics ours): "No doubt commerce by water was principally in the minds of those who framed and adopted the constitution, although *both its language and spirit embrace commerce by land as well.*" The case in which the language quoted

at the beginning of page 8 of appellant's brief was used, involved the question of taxation by a state, not of the instruments of commerce by water, but of the instruments of commerce by land. But in the later case of Sherlock vs. Alling, 93 U. S. 99, the court used language which we think directly applicable here. That was a suit against the owners of steamboats to recover damages for death, based upon a statute of the state of Indiana. One of the defenses was that the vessels were engaged in carrying on interstate commerce under the laws of the United States and the defendants, as their owners, were not liable for injuries occurring in their navigation, except as prescribed by *those* laws, and that these did not cover the liability created by the Indiana statute. Concerning this defense, Mr. Justice Field, speaking for the Court, said:

"The position of the defendants, as we understand it, is, that as both by the common and maritime law the right of action for personal torts dies with the person injured, the statute which allows actions for such torts, when resulting in the death of the person injured, enlarges the liability of parties for such torts, and that such enlarged liability, if applied to cases of marine torts, would constitute a new burden upon commerce. In supposed support of this position numerous decisions of this Court are cited by counsel to the effect that the states cannot, by legislation, place burdens upon commerce with foreign nations or among the several states. The decisions go to that extent, and their soundness is not questioned. But, upon an examination of the cases in which they were rendered, it will be found that the legislation adjudged invalid imposed a tax upon some instrument or subject of commerce; or exacted a license fee from parties engaged in commercial pursuits; or created an impediment to the

free navigation of some public waters; or prescribed conditions in accordance with which commerce in particular articles or between particular places was required to be conducted. In all the cases the legislation condemned, operated directly upon commerce, either by way of tax upon its business, license upon its pursuit in particular channels, or conditions for carrying it on." After citing cases in support of these assertions the Court further said: "And in all the other cases where legislation of a state has been held to be null for interfering with the commercial power of Congress. * * * the legislation created, in the way of tax, license or condition, a direct burden upon commerce, or in some way directly interfered with its freedom. In the present case no such operation can be ascribed to the statute of Indiana. That statute imposes no tax, prescribes no duty, and in no respect interferes with any regulations for the navigation and use of vessels. It only declares a general principle respecting the liability of all persons within the jurisdiction of the State, for torts resulting in the death of the parties injured. And in the application of the principle it makes no difference where the injury complained of occurred in the State, whether on land or on water. General legislation of this kind, prescribing the liabilities or duties of citizens of a State, without distinction as to pursuit or calling, is not open to any valid objection because it may affect persons engaged in foreign or interstate commerce. Objection might with equal propriety be urged against legislation prescribing the form in which contracts shall be authenticated, or property descend or be distributed on the death of its owner, because applicable to the contracts or estates of persons engaged in such commerce. In conferring upon congress the regulation of commerce, it was

never intended to cut the states off from legislating upon all subjects relating to the health, life and safety of their citizens, though the legislation might indirectly affect the commerce of the country. Legislation, in a great variety of ways, may affect commerce and persons engaged in it without constituting a regulation of it, within the meaning of the Constitution. * * * And it may be said, generally, that the Legislation of a State, not directed against commerce or any of its regulations, but relating to the rights, duties and liabilities of citizens, and only indirectly and remotely affecting the operations of commerce, is of obligatory force upon citizens within its territorial jurisdiction, whether on land or water, or engaged in commerce, foreign or interstate, or in any other pursuit. In our judgment the Statute of Indiana falls under this class."

It will thus be seen that the Court draws a distinction between the effect of taxation upon the instruments of interstate commerce, and the regulation of such commerce by other means.

This case has been cited with approval in many subsequent decisions of this Court, some of the more recent of which are:

Missouri R. Co. vs. Haber, 169 U. S. 613, 632.
Louisville R. Co. vs. Kentucky, 161 U. S. 677, 701.
Pittsburgh Coal Co. vs. Louisiana, 156 U. S. 590, 598-9.

Compulsory pilotage laws of a state, while admitted to be regulations of commerce, are held valid so long as Congress refrains from legislating on the subject.

Cooley vs. Board of Wardens, 12 Howard, 299, 320.

Huus vs. Steamship Co., 182 U. S. 392, 393.
The China, 7 Wall. 53.
Ex parte McNeil, 13 Wall. 236.

In the case last cited the Court said:

"A state law may give a substantial right of such a character that where there is no impediment arising from the residence of the parties the right may be enforced in the proper federal tribunal, whether it be a court of equity, or admiralty, or of common law."

In answer to the contention that the pilotage act of California, which provided that "All vessels, their tackle, apparel and furniture, and the masters and the owners thereof, shall be jointly and severally liable for pilotage fees, to be recovered in any court of competent jurisdiction," was in conflict with the commerce clause of the Constitution, this Court, speaking by Mr. Justice Field, said:

"The power conferred by this clause (commerce clause) is without limitation; it extends to all the subjects of commerce, and to all persons engaged in it; it embraces traffic, navigation and intercourse, and necessarily, therefore, the whole subject of pilots and pilotage, But this clause does not, in terms, exclude the exercise of any authority by the states to regulate pilots."

Pacific Mail S. Co. vs. Joliffe, 2 Wallace 450.

"It seems to be settled in our jurisprudence that so long as congress does not interpose to regulate the subject, the rights of material men furnishing necessaries to a vessel in her home port may be regulated in each state by state regulation, * * * . It would, undoubtedly, be more satisfactory to have a uniform law regulating

such liens, but until such a law be adopted (supposing congress to have the power) the authority of the states to legislate on the subject seems to be conceded by the uniform course of decisions. Indeed, there is quite an extensive field of border legislation on commercial subjects (generally local in character) which may be regulated by state laws until congress interposes, and thereby excludes further state legislation. Pilotage is one of the subjects in this category. So far as Congress has interposed its authority is supreme and exclusive; but where it has not done so, the matter is still left to the regulation of state laws."

The Lottawanna, 21 Wallace 558.

The statute of Washington here attacked is general in its terms, applying to *all* vessels, and makes no discrimination against those owned by non-residents. And, as was said by the U. S. Circuit Court, for the District of Washington, in a suit involving this same statute: "There would be no reason or justice in exempting vessels owned by non-residents, when employed within this state, from liabilities and burdens imposed upon vessels having resident owners."

McRae vs. Dredging Co., 86 Fed. 344, 350.

And as was said by the same learned Judge who rendered the decree here appealed from, in an opinion in another cause subsequently decided, involving the identical questions now pressed upon this Court, "Any law which discriminates in favor of non-resident ship-owners is equally as obnoxious to the principles of justice and the requirements of fair trade as a law which discriminates against non-resident ship-owners." * * *

The Robert Dollar, 115 Fed. 218, 221.

It is a sufficient answer to the objection that this statute is unreasonable, in that by its terms the lien conferred continues for a period of three years from the time the cause of action accrues, to say that the record shows that in this instance the liens against the "Roanoke" were asserted by the commencement of these proceedings within five months after the causes of action accrued (Record, pp. 1-7). The record fails to show that this lapse of time was unreasonable. No claim of *laches* on the part of the appellees is made. The answers show that during this period the vessel was in foreign waters, beyond the jurisdiction of the Court. No change in the ownership of the vessel took place. No claim is made that the appellant was without knowledge that the appellees furnished the materials and performed the services set forth in the libel. Nor are any facts set forth in the answers to show that the contractors, at whose instance the appellees furnished the materials and rendered the services, were obligated to pay appellees therefor.

DOES THE WASHINGTON STATUTE INVADE THE JURISDICTION IN ADMIRALTY?

Of course a state statute cannot convert a contract non-maritime in character by the general principles of the maritime law, into a maritime one, for that would be to extend the jurisdiction in admiralty. But it is now well settled that a lien conferred by a state statute as incident to a maritime contract, is, for all practical purposes, a maritime lien, and that such a lien is cognizable in the admiralty.

"The maritime law treats the lien, because conferred upon a maritime contract by the statute, as if it had been

conferred by itself, and consequently upon the same footing as all maritime liens."

The J. E. Rumbell, 148 U. S. 1, 20.
The Glide, 167 U. S. 606.
The Robert Dollar, 115 Fed. 218.

That the contracts set forth in the libels are maritime in character there can be no question. Therefore, even in the absence of the state statute, they were cognizable in the admiralty. How, then, can it be said that the statute has extended the admiralty jurisdiction? True, in the absence of the statute conferring the lien, no proceeding *in rem* could be maintained, but the jurisdiction nevertheless existed. It will not do to confound questions of jurisdiction with those of mere procedure. It has been said by this Court that "The question of the extent of the admiralty jurisdiction of the courts of the United States over cases like that now before the Court became at one time entangled in the question of the effect of the regulation of pleading and procedure in admiralty by this Court under the power conferred upon it by the acts of congress. * * *"

The Glide, supra, p. 612.

The changes made in the twelfth admiralty rule by this court seem to evince a purpose to place vessels, both domestic and foreign, on an equal footing as regards the enforcement of liens, whether arising under the general maritime law or created by state statutes. As originally promulgated, this rule limited the enforcement of local liens to cases of domestic ships, the language of the last clause of the rule being (italics ours): "And the like proceeding *in rem* shall apply to cases of *domestic* ships

where by the local law a lien is given to material men for supplies, repairs, or other necessaries." By a subsequent amendment to the rule, which took effect in 1859, the right to enforce local liens in the admiralty was entirely cut off, and this clause was made to read: "And the like proceeding *in personam*, but not *in rem*, shall apply to cases of domestic ships, for supplies, repairs, and other necessaries." In 1872 the rule was again amended to read thus: "In all suits by material men for supplies, or repairs, or other necessaries, the libellant may proceed against the ship and freight *in rem*, or against the master or owner alone *in personam*." Speaking of this change in the rule, the Court, in the Robbert Dollar, *supra*, at page 223, said: "There is significance in the fact that when the rule was amended the second time, instead of restoring the original phraseology which limited the application of statutory liens to domestic vessels, the rule was re-cast entirely and the words indicating a distinction between domestic ships and foreign ships were omitted."

In The Lottawanna, *supra*, the Court said of the last change in the rule: "As to the recent change in the admiralty rule referred to, it is sufficient to say that it was simply intended to remove all obstructions and embarrassments in the way of instituting proceedings *in rem* in all cases where liens existed by law. * * *"

It seems to us that the imposition by a local statute of a lien upon foreign vessels, so long as such lien is *consistent* with the principles of the general maritime law, is no more an invasion of the admiralty jurisdiction than the creation by such statute of a lien upon domestic vessels.

The statutes of New York, which were under consideration in The Chusan, and The Lyndhurst, cited by appellant, were *absolutely inconsistent* with the lien known to the general maritime law in this, that the duration of the liens conferred by such statutes was limited, when in both of those cases the court said that the general admiralty law conferred a lien for the materials there supplied. But in the case at bar it is admitted by counsel for appellant that no lien was conferred by the general admiralty law for the materials furnished and services performed set forth in the libels.

The case of Steamboat New York vs. Rae, 59 U. S. 223, cited by counsel, involved the question of a statute of New York regulating navigation—a subject over which congress had already exercised its authority.

Hall vs. De Cuir, 95 U. S. 585, was a case in which the Court said that the state statute there under consideration imposed a *direct* burden upon interstate commerce, and that "It (the statute) does not act upon the business through the local instruments to be employed after coming within the state, but directly upon the business as it comes into the state from without or goes out from within." And in the opinion there the Court cited, with approval, Sherlock vs. Alling, *supra*.

The distinction between the effect in admiralty of local laws which are *consistent* with the principles of the general maritime law, and those which are *inconsistent* therewith, we think, is upheld in Workman vs. New York, 179 U. S. 552. One of the questions involved in that case was whether the maritime law or the local law should govern in determining in the admiralty the liability of a city for an injury caused by a fire boat owned by the city. It was held that by the maritime law the city was liable, and that the local law, which, as construed by the state court,

exempted the city from liability, was not applicable because it deprived parties of rights conferred by the admiralty law. In other words, because it was *inconsistent* with the principles of the admiralty law. Referring to the cases of the J. E. Rumbell, The Lottawanna and The Albert Dumois, which were cited in support of the argument that state statutes were competent to change the general maritime law, even to the extent of depriving parties of rights conferred by that law, the Court said (italics ours):

"True, it is well settled that in certain cases where a lien is given by a state statute, the admiralty courts will enforce rights so conferred when not in *absolute conflict* with the admiralty law. * * * But such cases afford no foundation for the proposition that state laws or decisions can *deprive* an individual of a right of recovery for a maritime lien, which, under the general principles of the admiralty law, he undoubtedly possessed. * * * The cases in question, on the contrary, but illustrate the alacrity with which admiralty courts adopt statutes granting the right to relief where otherwise it could not be administered by a maritime court. * * *"

We contend, therefore, (1) that this court is without jurisdiction to review these proceedings; (2) that the statute of Washington is not a regulation of commerce within the meaning of the Constitution; and (3) that such statute does not invade the jurisdiction in admiralty. And we ask, therefore, that the appeal be dismissed, or, if this be denied, that the decree appealed from be affirmed with costs.

Respectfully submitted.

HAROLD PRESTON,
BENTON EMBREE AND
CLARENCE S. PRESTON,
Counsel for Appellees.

Supreme Court of the United States.

No. 123.—October Term, 1902.

The Roanoke. } Appeal from the District Court of the United States for the District of Washington.

[March 2, 1903.]

This was a libel *in rem* for materials, and also for work and labor, alleged to have been furnished by the libellants King and Winge in the repair of the steamship Roanoke, to certain contractors with the owners, who had full charge of the alteration and repair of the steamship. An intervening libel was also filed by one Fraser for labor and material furnished under the same conditions.

The cases resulted in decrees for the libellants, from which the North American Transportation and Trading Company, owner of the steamship, appealed directly to this court, and the following facts were found:

"The North American Transportation and Trading Company appeared as claimant and owner and the vessel was released upon its stipulation.

"It admitted all the allegations of the libel except that the work was done on the credit of the ship, which it denied except that it admitted that libelants had acted under the belief that they had a lien by virtue of law. It then alleged its incorporation and existence under the laws of the State of Illinois, the residence there at all times of its president and general manager, its maintaining only agencies at Seattle and at other places in Alaska and Canada, and its enjoying a high credit. The Roanoke it alleged to be an ocean-going vessel registered at Chicago, Illinois, under the navigation laws of the United States, with the name of Chicago painted on her stern. She was alleged to have been purchased by claimant in 1898 on the Atlantic coast, and, upon the Pacific coast since that time, employed between Seattle and the mouth of the Yukon in the summer, and between San Francisco and southern ports in the winter. It was further alleged that the claimant had never given any order for the material and labor described in the libel, and that these were furnished on the order of the contractor, who, before the filing of the libel and without any knowledge by claimant of these unpaid claims, had been paid by this claimant for these materials and labor in full. It was alleged in conclusion that the lien claimed by libelants was claimed under sections 5953 and 5954 of Bellinger's Code and Statutes of Washington, that such a lien was in this instance void, being in violation of the eighth section of the first article of the Constitution of the United States, conferring upon Congress the power to regulate commerce among the several States, was an illegal burden upon interstate commerce, and in violation also of the fourteenth article of the Constitution of the United States, as depriving claimant of its property without due process of law and without its equal

protection, and was in violation of the second section of the third article of the Constitution conferring on the courts of the United States admiralty and maritime jurisdiction.

"To the intervening libel of Fraser the same answer was made.

"To each of these answers respectively the libelants and intervening libelant excepted as insufficient, and the whole of each, to constitute any answer or defense to the libel.

"The exceptions were sustained, the claimant elected to stand on its answer and a decree was entered against it and its stipulators for the whole sum claimed in the libels."

Mr. Justice BROWN delivered the opinion of the Court.

This case is appealed directly from the District Court to this court under that clause of section 5 of the Court of Appeals Act, which permits such appeal "in any case in which the constitution or law of a State is claimed to be in contravention of the Constitution of the United States." No additional significance is given to the appeal by certain questions certified by the District Court, as the power to certify is only given in cases appealed upon questions of jurisdiction. But as the case is properly before us upon direct appeal from the District Court, we proceed to dispose of the question of the constitutionality of the law of Washington, under which these proceedings were taken.

By that law (2 Bellinger's Code, secs. 5953 and 5954)—

"5953. All steamers, vessels and boats, their tackle, apparel and furniture, are liable—

* * * * * *

"3. For work done or material furnished in this State, for their construction, repair or equipment, at the request of their respective owners, masters, agents, consignees, contractors, sub-contractors, or other person or persons having charge in whole or in part of their construction, alteration, repair or equipment; and every contractor, sub-contractor, builder or person having charge, either in whole or in part of the construction, alteration, repair or equipment of any vessel, shall be held to be the agent of the owner, for the purposes of this chapter;

"Demands for these several causes constitute liens upon all steamers, vessels and boats, and their tackle, apparel and furniture, and have priority in their order herein enumerated, and have preference over all other demands; but such liens only continue in force for the period of three years from the time the cause of action accrued."

"5954. Such liens may be enforced in all cases of maritime contracts or service by a suit in admiralty, *in rem*, and the law regulating proceedings in admiralty shall govern in all such suits; and in all cases of contracts or service not maritime by a civil action in any District Court in this Territory."

In this connection the following propositions may be considered as settled:

1. That by the maritime law as administered in England and in this country, a lien is given for necessaries furnished a foreign vessel upon the

credit of such vessel. (*The General Smith*, 4 Wheat. 438; *The Grapeshot* 9 Wall. 129; Gen. Admiralty Rule 12,) and that in this particular the several States of this Union are treated as foreign to each other. (*The General Smith*, 4 Wheat. 438; *The Kalorama*, 10 Wall. 204, 212.)

2. That no such lien is given for necessaries furnished in the home port of the vessel, or in the port in which the vessel is owned, registered, enrolled or licensed and the remedy in such case, though enforceable in the admiralty, is *in personam* only. (*The Lottawanna*, 21 Wall. 558; *The Edith*, 94 U. S, 518.) This is a distinct departure from the Continental system, which makes no account of the domicil of the vessel, and is a relic of the prohibitions of Westminster Hall against the Court of Admiralty, to the principle of which this court has steadily adhered.

3. That it is competent for the States to create liens for necessaries furnished to domestic vessels, and that such liens will be enforced by the courts of admiralty under their general jurisdiction over the subject of necessaries. (*The General Smith*, 4 Wheat. 488; *The Planter*, (*Peyroux* v. *Howard*,) 7 Pet. 324; *The St. Lawrence*, 5 Black, 522; *The Lottawanna*, 21 Wall. 558; *The Belfast*, 7 Wall. 624; *The J. E. Rumbell*, 148 U. S. 1, 12.) The right to extend these liens to foreign vessels in any case is open to grave doubt. (*The Chusan*, 2 Story, 455; *The Lyndhurst*, 48 Fed. Rep. 839.)

The question involved in this case, however, is whether the States may create such liens as against foreign vessels, (vessels owned in other States or countries,) and under such circumstances as would not authorize a lien under the general maritime law. The question is one of very considerable importance, as it involves the power of each State, which a vessel may visit in the course of a long voyage, to impose liens under wholly different circumstances and upon wholly different conditions. In the case under consideration the vessel was owned by an Illinois corporation, enjoying a high credit, and maintaining agencies at Seattle and at other places in Alaska and Canada. The Roanoke was an ocean-going vessel, registered at Chicago under the navigation laws of the United States, with the name "Chicago" painted on her stern, although she was engaged in trade upon the Pacific coast between Seattle and the mouth of the Yukon in summer, and between San Francisco and southern ports in winter. Neither the owner nor master nor other officers of the vessel had given an order for the material and labor set forth in the libel, which were furnished upon the order of a contractor, who, before the filing of the libel and without any knowledge by the owner of these unpaid claims, *had been paid in full for these claims.*

Although this court has never directly decided whether materials and labor furnished by workmen or sub-contractors constitute a lien upon a

vessel—in other words, whether the contractor can be regarded as an agent of the vessel in the purchase of such labor and materials—there is a general consensus of opinion in the State courts and in the inferior Federal courts that labor and materials furnished to a contractor do not constitute a lien upon the vessel, unless at least notice be given to the owner of such claim before the contractor has received the sum stipulated by his contract. (*Smith* v. *The Steamer Eastern Railroad*, 1 Curtis, 273; *Southwick* v. *The Clyde*, 6 Blackf. 148; *Hubbell* v. *Denison*, 20 Wend. 181; *Burst* v, *Jackson*, 10 Barb. 219; *The Whitaker*, 1 Sprague, 229, 382; *Harper* v. *The New Brig*, Gilpin, 536; *Ames* v. *Swett*, 33 Me. 479; *Squire* v. *One Hundred Tons of Iron*, 2 Ben. 21; *The Marquette*, Brown's Adm. 364.)

The injustice of permitting such claims to be set up is plainly apparent. The master is the agent of the vessel and its owner in more than the ordinary sense. During the voyage he is in fact the *alter ego* of his principal. He is entrusted with an uncontrolled authority to provide for the crew, and for the preservation and repair of the ship. He engages the cargos, receives the freight, hires and pays his crew, and is entrusted perhaps for years with the command and disposition of the vessel. With full authority to bind the vessel, his position is such that it is almost impossible for him to acquaint himself with the laws of each individual State he may visit, and he has a right to suppose that the general maritime law applies to him and his ship, wherever she may go, unhampered by laws which are mainly intended for local application, or for domestic vessels. Local laws, such as the one under consideration, ordinarily protect the ship by requiring notice of the claim to be filed in some public office, limiting the time to a few weeks or months within which the laborer or sub-contractor may proceed against her, requiring notice to be given of the claim, before the contractor himself has been paid, and limiting his recovery to the amount remaining unpaid at the time such notice is received. The statute of Washington, however, provides for an absolute lien upon the ship for work done or material furnished at the request of the contractor or sub-contractor, and makes no provision for the protection of the owner in case the contractor has been paid the full amount of his bill before notice of the claim of the sub-contractor is received. The finding in this case is that the contractor, who had agreed in consonance with the usual course of business, to make the repairs upon this vessel, had been paid in full by the claimant. The injustice of holding the ship under the circumstances is plainly manifest.

Not only is the statute in question obnoxious to the general maritime law in declaring every contractor and sub-contractor an agent of the owner, but it establishes a new order of priority in payment of liens,

abolishes the ancient and equitable rule regarding "stale claims," and permits the assertion of a lien at any time within three years, regardless of the fact that the vessel may have been sold to a *bona fide* purchaser, not only without notice of the claim, but without the possibility of informing himself by a resort to the public records. It also gives, or at least creates the presumption of, a lien, though the materials be furnished upon the order of the owner in person.

No opinion upon this subject can afford to ignore the admirable discussion of Mr. Justice Story in the case of *The Chusan*, (2 Story, 255,) in which he refused to apply to a Massachusetts vessel a law of the State of New York, requiring a lien for supplies to be enforced before the vessel left the State:

"This statute is, as I conceive, perfectly constitutional, as applied to cases of repairs of domestic ships, that is, of ships belonging to the ports of that State. . . . But in cases of foreign ships and supplies furnished to them the jurisdiction of the courts of the United States is governed by the Constitution and laws of the United States, and is in no sense governed, controlled or limited by the local legislation. . . . For myself, I can only say that during the whole of my judicial life I have never up to the present hour heard a single doubt breathed upon the subject." To the same effect is *The Lyndhurst*, (48 Fed Rep. 839.)

While no case involving this precise question seems to have arisen in this court, we have several times had occasion to hold that where Congress has dealt with a subject within its exclusive power, or where such exclusive power is given to the Federal courts, as in cases of admiralty and maritime jurisdiction, it is not competent for States to invade that domain of legislation, and enact laws which in any way trench upon the power of the Federal government. Cases arising in other branches of the law furnish apt analogies. The principle is stated in a nutshell by Chief Justice Marshall in *Sturges* v. *Crowninshield*, (4 Wheat. 122, 193.) "But it has never been supposed that this concurrent power of legislation extended to every possible case in which its exercise by the States has not been expressly prohibited. The confusion resulting from such a practice would be endless. . . . That whenever the terms in which a power is granted to Congress, or the nature of the power required that it should be exercised exclusively by Congress, the subject is as completely taken from the State legislatures as if they had been expressly forbidden to act on it." This was said of a bankrupt law of New York which assumed to discharge the debtor from all liability for debts previously contracted, notwithstanding the Constitution had vested the power in Congress of establishing uniform laws on the snbject of bankruptcy. It was held that the States had a right to pass bankrupt laws until the power had been acted upon by Congress, though the law of New York discharging

the debtor from liability was held to be void as impairing the obligation of prior contracts within the meaning of the Constitution.

In *Hall* v. *DeCuir*, (95 U. S. 485, 498,) it was said that, inasmuch as interstate commerce is regulated very largely by Congressional legislation, it followed that such legislation must supersede all State legislation upon the same subject, and, by necessary implication, prohibit it, except in cases where the legislation of Congress manifests an intention to leave some particular matter to be regulated by the several States, as, for instance, in the case of pilotage. (*Cooley* v. *Board of Wardens*, 12 How. 299.) Upon this principle it was held that a law of Louisiana excluding colored passengers from the cabin set apart for the use of whites during the passage of steamboats down the Mississippi, was a regulation of interstate commerce, and therefore unconstitutional. To the same effect is *Sinnot* v. *Davenport*, (22 How. 227.) In the subsequent cases of *Louisville &c. Railway* v. *Mississippi*, (133 U. S. 587,) and *Plessy* v. *Ferguson*, (163 U. S. 537,) State laws requiring separate railway carriages for the white and colored races were sustained upon the ground that they applied only between places in the same State.

In the very recent case of *Easton* v. *Iowa*, (*ante*, p. ,) it was held that a State law punishing presidents of banks receiving deposits of money at a time when the bank was insolvent, and when such insolvency was known to them, was unconstitutional as applied to national banks whose operations were governed exclusively by acts of Congress. Said Mr. Justice Shiras: "But we are unable to perceive that Congress intended to leave the field open for the States to attempt to promote the welfare and stability of national banks by direct legislation. If they had such power it would have to be exercised and limited by their own discretion, and confusion would necessarily result from control, possessed and exercised by two independent authorities." See also *Farmers' &c. Bank* v. *Dearing*, (91 U. S. 29;) *McCulloch* v. *Maryland*, (4 Wheat. 425.)

The following cases are also to the same general effect: *Degant* v. *Michael*, (2 Ind. 396;) *State* v. *Pike*, (15 N. H. 83;) *Lynch* v. *Clarke*, (1 Sand. Ch. 583, 644;) *Jack* v. *Martin*, (12 Wend. 311;) *Ex parte Hill*, (38 Ala. 429, 450;) *People* v. *Fonda*, (62 Mich. 401.) Although it is equally true that where Congress, having the power, has exercised it but incidentally, and obviously with no intention of covering the subject, the States may supplement its legislation by regulations of their own not inconsistent with it. (*Reid* v. *Colorado*, *ante*, p. .)

Bearing in mind that exclusive jurisdiction of all admiralty and maritime cases is vested by the Constitution in the Federal courts, which are thereby made judges of the scope of such jurisdiction, subject, of course, to Congressional legislation, the statute of the State of Washington, in so

far as it attempts to control the administration of the maritime law by creating and superadding conditions for the benefit of a particular class of creditors, and thereby depriving the owners of vessels of defenses to which they would otherwise have been entitled, is an unlawful interference with that jurisdiction, and to that extent is unconstitutional and void.

The decree of the District Court is therefore reversed, and the case remanded to that court with directions to dismiss the libels.

Mr. Justice HARLAN concurred in the result.

True copy.

Test:

Clerk Supreme Court, U. S.